Rules of Practice
for the
Environmental Review Tribunal

May 31, 2002

Table of Contents
Rules of Practice for the Environmental Review Tribunal

PREAMBLE 1
Purpose of the Rules 1

GENERAL 2
Application of the Rules 2
Interpretation 2
Practice Directions 2
Guidelines 2
Forms 2
Definitions 3
Signing of Documents 3
Computing Time (Deadlines) 3
Non-compliance with Rules 3
Tribunal Counsel 4
Language 4
Accommodation 4

PARTIES, PARTICIPANTS, and PRESENTERS 4
Naming of a Party 4
Role of a Party 4
Co-operation of Parties 5
Naming of a Participant 5
Role of a Participant 5
Naming of a Presenter 6
Role of a Presenter 6
Communications with the Tribunal 7

REPRESENTATIVES 7

COMMENCEMENT OF APPEAL HEARINGS 7
COMMENCEMENT OF APPLICATION HEARINGS 8
ALLEGATIONS AGAINST PERSONS WHO ARE NOT PARTIES 9
CONSEQUENCES OF NON-ATTENDANCE 9

ADJOURNMENTS 9

MOTIONS 9
Notice of Motion 9
Hearing Date for Motions 10
Service and Filing of Notice of Motion 10

Response to Notice of Motion 10
Evidence for Use on Motions 10
Motion to Stay a Director's Order or Decision 10
Motions to Dismiss 11
Motions to Dismiss for Non-compliance by Other Parties and Participants 11

PRELIMINARY HEARING OR CONFERENCE 11
Conference 12

MEDIATION 12
Purpose of Mediation 12
Confidentiality 12

TERMINATION OF PROCEEDINGS 12

HEARING PROCEDURE 13
Combining Proceedings or Hearing Proceedings Together 13
Verbatim Reporters and Transcripts 13
Opening Statements 13
Site Visit and Inspections 13
Evening Sessions 13
Final Submissions 13

PUBLIC ACCESS TO HEARINGS AND DOCUMENTS 14
Access to Hearings 14
Access to Documents and the Tribunal Record 14

WITNESSES 14
Summons to Witness 14
Technical and Opinion Witnesses Appointed by the Tribunal 14

WRITTEN AND ELECTRONIC PROCEEDINGS 14

APPLICATIONS FOR LEAVE TO APPEAL UNDER SECTION 38 OF THE ENVIRONMENTAL BILL OF RIGHTS, 1993 15

CORRECTION OF ERRORS 16

SERVICE OF NOTICE OF APPEAL/JUDICIAL REVIEW 16

COSTS 16

Appendix A - *Definitions* 17

Rules of Practice for the Environmental Review Tribunal

PREAMBLE

These Rules have been adopted by the Environmental Review Tribunal pursuant to section 25.1 of the *Statutory Powers Procedure Act* on May 31, 2002.

Purpose of the Rules

The purpose of these Rules is to provide: a fair, open, accessible and understandable process for parties and other interested persons; to facilitate and enhance access and public participation; to encourage cooperation among parties and make proceedings less adversarial, where appropriate; to assure the efficiency and timeliness of proceedings and avoid unnecessary length and delay; and to assist the Tribunal in fulfilling its statutory mandate.

GENERAL

Application of the Rules

1. These Rules apply to appeal hearings held under the *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Pesticides Act,* and to appeal hearings of development permit applications under the *Niagara Escarpment Planning and Development Act*. These Rules also apply to application hearings held under the *Environmental Assessment Act,* the *Environmental Bill of Rights, 1993*, the *Environmental Protection Act*, the *Ontario Water Resources Act*, to matters referred to the Tribunal by Order in Council, and to hearings of Joint Boards under the *Consolidated Hearings Act*, where the Joint Board has adopted these Rules. Any panel conducting a hearing may, in its discretion, depart from these Rules.

Interpretation

2. "Rules" mean these rules and include any practice directions issued and procedural orders made by the Tribunal .The Tribunal may issue practice directions and guidelines for a proceeding which, if in conflict with these Rules, prevail over these Rules.

Practice Directions:

Notices
Constitutional Questions
Service of Documents
Hearing Documents
Written Questions and Answers
Meetings of Consultants
Applications for Leave to Appeal under the *Environmental Bill of Rights*

Guidelines:

Written and Electronic Hearings
Compelling a Witness to Attend a Hearing
Tribunal Appointed Facilitators and Mediators
Consideration of Agreements
Technical and Opinion Evidence
Adjournments
Costs Awards

Forms:

1. Statement of Service
2. Summons to a Witness
3. Summons to a Witness (Electronic Hearing)

3. During any proceeding, the Tribunal may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it.

4. The Tribunal may exercise any of its powers under these Rules on its own initiative or at the request of any party.

5. Where any of these Rules conflict with any statute, the provisions of the statute shall prevail.

6. No proceeding is invalid by reason only of a defect or other irregularity in form.

Definitions

7. Definitions of various terms used in these Rules are found in Appendix A.

Signing of Documents

8. A document to be signed on behalf of the Tribunal may be signed by the Chair or his or her designee, or by a member of the Tribunal, or by the Tribunal Secretary.

Computing Time (Deadlines)

9. In computing time periods under these Rules, or an order or direction of the Tribunal, or its Secretary, "days" shall be calendar days. Where the time for doing anything under these Rules expires on a Saturday, Sunday or statutory holiday, the act may be done on the next business day. If a document is received by the Tribunal after 4:00 p.m., it shall be deemed to have been received on the next business day.

Non-compliance with Rules

10. If a party or participant, its representative or its consultant fails to comply with these Rules, the Tribunal may:

    (a) impose such conditions as will ensure compliance;

    (b) when permitted by law, and upon notice, order costs to be paid by the party, or where appropriate, its representative or consultant; and/or

    (c) terminate party or participant status.

Tribunal Counsel

11. The Tribunal may appoint and direct its own counsel to assist the Tribunal.

Language

12. Parties, participants, presenters and their representatives are entitled to communicate and receive available services in the French language from the Tribunal in the areas of the province designated as bilingual in the *French Language Services Act*.

Accommodation

13. Parties, participants, presenters and their representatives should notify the Tribunal Secretary as soon as possible of any accommodation requirements with respect to proceedings before the Tribunal.

PARTIES, PARTICIPANTS, and PRESENTERS

Naming of a Party

14. The following persons are parties for the purpose of the Rules:

    (a) persons specified as parties by or under the statute under which the proceeding arises;

    (b) persons otherwise entitled by law to be parties to the proceeding;

    (c) persons who request party status and are so specified by the Tribunal as parties for all or part of the proceeding, and on such conditions as the Tribunal considers appropriate.

15. In deciding whether to name a person as a party to the proceeding, the Tribunal may consider relevant matters including whether:

    (a) a person's interests may be directly and substantially affected by the Hearing or its result;

    (b) a person has a genuine interest in the subject matter of the proceeding;

    (c) a person is likely to make a useful and distinct contribution to the Tribunal's understanding of the issues in the proceeding.

Role of a Party

16. The Tribunal may reduce the procedural obligations of a party depending on the interests and resources of the party.

17. A party to the proceeding before the Tribunal may:

    (a) bring motions;

    (b) be a witness at the Hearing;

    (c) be questioned by the Tribunal and the parties;

    (d) call witnesses at the hearing;

    (e) cross-examine witnesses;

    (f) make submissions to the Tribunal, including final argument;

    (g) receive copies of all documents exchanged or filed by the parties;

    (h) attend site visits;

    (i) claim costs or be liable to pay costs where permitted by law; and

    (j) appeal the Tribunal's decision where permitted by law.

Co-operation of Parties

18. Parties shall co-operate with each other in matters such as scheduling, disclosure, procedure and agreements on uncontroverted facts to the fullest extent that is compatible with their interests.

Naming of a Participant

19. The Tribunal may name persons to be participants in all or part of a proceeding on such conditions as the Tribunal considers appropriate. A participant to a proceeding is not a party to the proceeding.

Role of a Participant

20. A participant in a Hearing may:

    (a) be a witness at the Hearing;

    (b) be questioned by the Tribunal and the parties;

    (c) make oral and written submissions to the Tribunal at the commencement and at the end of the Hearing;

(d) upon request, receive a copy of documents exchanged by the parties that are relevant to the participant's interests;

(e) attend site visits.

21. A participant in a Hearing may not:

(a) call witnesses;

(b) cross-examine witnesses;

(c) bring motions;

(d) claim costs or be liable for costs;

(e) appeal the Tribunal's decision.

Naming of a Presenter

22. The Tribunal may name persons to be presenters in all or part of a proceeding on such conditions as the Tribunal considers appropriate. A presenter to a proceeding is not a party to, nor a participant in the proceeding.

Role of a Presenter

23. A presenter in a Hearing:

(a) shall present his or her relevant evidence at a pre-arranged time, either during a Hearing's regular day-time session or at a special evening session;

(b) may provide the Tribunal with a written statement as a supplement to oral testimony;

(c) may be questioned by the Tribunal and the parties.

24. A presenter in a Hearing may not:

(a) call witnesses;

(b) cross-examine witnesses;

(c) bring motions;

(d) make oral and written submissions to the Tribunal at the commencement and at the end of the Hearing;

(e) receive a copy of documents exchanged by the parties that are relevant to the presenter's interests;

(f) claim costs or be liable for costs;

(g) appeal the Tribunal's decision.

25. The Tribunal may direct persons who have similar interests to designate one person to act as their representative or to co-ordinate their participation in the proceeding.

Communications with the Tribunal

26. Written communication to the Tribunal panel shall occur only through the Tribunal Secretary, and shall be copied to all parties or their representatives.

27. Oral communication with the Tribunal panel about a current proceeding shall occur only in the presence, or with the consent, of all parties.

28. Where a party or participant has a representative, all communication between the Tribunal and the party or participant shall be through the representative, with the exception of notices of the Hearing, which shall be served upon the parties, known to the Tribunal at that time.

29. The Tribunal shall not be copied on correspondence and documents exchanged by parties and participants, unless the Tribunal Secretary has been consulted.

REPRESENTATIVES

30. The Tribunal may require that a representative file, in a form satisfactory to the Tribunal, a written acknowledgement of his or her authorization to represent a party. If a representative ceases to represent a party, the representative or the party shall promptly notify the Tribunal and the other parties in writing.

COMMENCEMENT OF APPEAL HEARINGS

31. When filing a Notice of Appeal, the Appellant shall ensure that the Tribunal receives the Notice within 15 days from the date of service of the Director's Order or Decision, and shall provide to the Tribunal:

(a) a copy of the Director's Order or Decision;

(b) a list of the names and addresses of all owners of property within 120 metres of the boundary of the property which is the subject of the Order or Decision;

(c) a list of the names and addresses of any other persons who should be notified of the proceedings because they may have an interest in the outcome.

32. Upon receiving service of the Notice of Appeal, the Director shall, within 10 days, file with the Tribunal a list of the names and addresses of any other persons whom the Director considers should be notified of the proceedings because they may have an interest in the outcome.

COMMENCEMENT OF APPLICATION HEARINGS UNDER THE ENVIRONMENTAL PROTECTION ACT AND THE ONTARIO WATER RESOURCES ACT

33. When the Director requires the Tribunal to hold a hearing under the *Environmental Protection Act* or the *Ontario Water Resources Act*, to consider an application for a certificate of approval or to determine whether or not a by-law should apply, the Director shall provide to the Tribunal:

    (a) notice in writing of the Director's requirement that the Tribunal hold a hearing;

    (b) a copy of the application for a certificate of approval or by-law which is to be the subject of the hearing;

    (c) a list of the names and addresses of any other persons who should be notified of the proceedings because they may have an interest in the outcome.

34. When the Director requires the Tribunal to hold a hearing under the *Environmental Protection Act* or the *Ontario Water Resources Act*, to consider an application for a certificate of approval or to determine whether or not a by-law should apply, the Proponent shall provide the Tribunal with:

    (a) a list of the names and addresses of all owners of property within 120 metres of the boundary of the property which is the subject of the application or Decision;

    (b) a list of the names and addresses of any other persons who should be notified of the proceedings because they may have an interest in the outcome.

35. The Tribunal may direct how notice of the hearing is to be provided and may direct:

    (a) mailing of the notice of hearing and a location plan map of the subject lands;

    (b) publishing the notice of hearing in a particular form with a location map of the subject lands.

ALLEGATIONS AGAINST PERSONS WHO ARE NOT PARTIES

36. A party that requests that the Tribunal vary, revoke or provide other relief from the Director's decision or order because of the alleged acts or omissions of a person who is not a party to the appeal shall:

    (a) within 10 days of the request serve that person with notice of the allegation, including the facts upon which the Appellant relies in support of the allegation; and

    (b) within 15 days of the request provide the Tribunal with the person's address, telephone and fax numbers, and file a copy of the notice and proof of service.

CONSEQUENCES OF NON-ATTENDANCE

37. Where notice of a Conference, the Preliminary Hearing or the Hearing has been served and a person served with notice does not attend, the Tribunal may proceed in that person's absence without any further notice, unless the Tribunal otherwise directs.

ADJOURNMENTS

38. Any request for an adjournment shall be made in writing at least seven days before the date of the Hearing or its continuation, unless the Tribunal in its discretion otherwise permits.

39. In granting an adjournment, the Tribunal may impose such conditions as it considers appropriate.

MOTIONS

Notice of Motion

40. A motion shall be made by a written notice of motion, unless the Tribunal in its discretion otherwise permits.

41. Every notice of motion shall:

    (a) state the precise relief sought;

    (b) state the grounds to be argued, including a reference to any statutory provision or rule to be relied on;

    (c) list the documentary evidence to be used at the hearing of the motion.

Hearing Date for Motions

42. A hearing date shall be obtained from the Tribunal before the notice of motion is served.

Service and Filing of Notice of Motion

43. Unless the Tribunal in its discretion otherwise permits, a person making a motion shall,

    (a) serve upon all parties a notice of the motion and all supporting material at least seven days before the motion is to be heard and,

    (b) file with the Tribunal the notice of motion and all supporting material with proof of service at least three days before the motion is to be heard.

Response to Notice of Motion

44. Unless the Tribunal in its discretion otherwise permits, any party responding to the motion shall serve and file any materials intended to be relied upon at least two days before the motion is to be heard.

Evidence for Use on Motions

45. Unless the Tribunal permits oral evidence, the evidence in motion Hearings shall be in the form of affidavits and transcripts of cross-examination of witnesses on their affidavits.

Motion to Stay a Director's Order or Decision

46. (a) An Applicant seeking a stay shall, before obtaining an appointment for the Hearing of the motion, arrange through the Tribunal Secretary a teleconference call with the Tribunal Chair or his or her designee and all parties to seek directions as to:

        (i) the form and content of the motion;
        (ii) the necessary supporting materials, including affidavit materials;
        (iii) the scheduling of dates for cross-examination of witnesses; and
        (iv) the scheduling of the hearing of the motion.

    (b) An Applicant seeking an interim stay shall, before obtaining an appointment for the Hearing of the motion, arrange through the Tribunal Secretary a teleconference call with the Tribunal Chair or his/her designee and all parties to seek directions as to:

        (i) the form and content of the motion;
        (ii) any necessary supporting materials, including affidavit materials; and
        (iii) the scheduling of the hearing of the motion.

Motions to Dismiss

47. A motion to dismiss the proceedings may be initiated by any Party or the Tribunal for delay or for non-compliance with orders, rules, undertakings or written requests from Tribunal staff.

Motions to Dismiss for Non-compliance by Other Parties and Participants

48. Rule 47 also applies, with any necessary changes, to non-compliance, failures, and refusals by any other party or participant. The Tribunal may limit or revoke the participation rights of any parties or participants other than the Appellant, the Proponent, the Director and persons otherwise entitled by law to be parties to the proceedings.

PRELIMINARY HEARING OR CONFERENCE

49. A Preliminary Hearing may be held to deal with issues such as the following:

    (a) identifying parties, participants and presenters, and the scope of their participation in the Hearing;

    (b) determining the length, schedule and location of the Hearing;

    (c) determining whether the Hearing will be conducted orally, electronically or in writing;

    (d) hearing preliminary motions, including motions to dismiss for non-compliance;

    (e) addressing procedural issues;

    (f) identifying, defining, scoping and simplifying issues;

    (g) arranging for the exchange among parties of all documents relevant to the proceeding;

    (h) identifying witnesses;

    (i) establishing facts or evidence that may be agreed on; and

    (j) any other matters that may assist in the just and most expeditious disposition of the proceeding.

    Any representative attending a Preliminary Hearing or Conference must have the authority to make agreements and give undertakings respecting the matters to be addressed.

Conference

50. A Conference may be held to deal with any of the issues described in clauses 49 (b), (c), (e) and (j).

MEDIATION

Purpose of Mediation

51. Mediation, which is part of the proceeding, but not a part of the Hearing, may be held for the purpose of attempting to reach a settlement of the issues, or at least their simplification. It is conducted, in confidence, by a member of the Tribunal, by Tribunal staff or a person appointed by the Tribunal. If no full settlement is reached on the issues, the Hearing will take place with no reference to the information disclosed during mediation, except with consent of the parties.

Confidentiality

52. The individual(s) conducting the mediation may exclude everyone but the parties from the mediation, and

    (a) all documents submitted and all statements made at the mediation are confidential and without prejudice;

    (b) any confidential documents shall not be accessible to the public, shall be returned to the party who filed the documents after the mediation, shall not be considered to be filed in the proceedings, and are not part of the record.

TERMINATION OF PROCEEDINGS

53. Within five days after a Proponent withdraws its application, or an Appellant withdraws its appeal or the Director revokes the decision or order that is the subject of the appeal, the Proponent, the Appellant or the Director, as the case may be, shall notify the Tribunal and all other parties and seek their consent to the termination of the proceedings.

54. Within seven days after notice is given under Rule 53, any party objecting to the termination of the proceedings shall give notice of the objection to all other parties and to the Tribunal.

55. If the Tribunal has reason to believe that the withdrawal or revocation will adversely affect the interests of any party or is contrary to the public interest, the Tribunal may hold, or continue, a Hearing despite the withdrawal or revocation, or may issue a decision and order based upon the proceedings to date.

56. Following the withdrawal or revocation of an application, the Tribunal may issue a final order dismissing the proceedings.

HEARING PROCEDURE

Combining Proceedings or Hearing Proceedings Together

57. If two or more proceedings before the Tribunal involve the same or similar questions of fact, law, or policy the Tribunal may, with the consent of the parties, combine the proceedings or any part of them or hear the proceedings at the same time.

Verbatim Reporters and Transcripts

58. Any party may arrange for the attendance of a qualified verbatim reporter at his or her own expense, provided that the first party to order a transcript shall also provide, at their expense, an electronic copy to the Tribunal as part of the record.

Opening Statements

59. At the beginning of each Hearing, each party and participant may give a brief opening statement that describes the issues which that party will address at the Hearing.

Site Visit and Inspections

60. The Tribunal may make one or more site visits or inspections to better understand the evidence given at the Hearing, and may in each case issue directions for the procedures to be followed during the site visit or inspection.

Evening Sessions

61. The Tribunal may conduct one or more evening sessions during the course of the Hearing.

Final Submissions

62. After the parties have had an opportunity to present evidence, the Tribunal shall give all parties and participants an opportunity to make a final argument in support of the decision or order they wish the Tribunal to make.

PUBLIC ACCESS TO HEARINGS AND DOCUMENTS

Access to Hearings

63. A Hearing shall be open to the public unless ordered otherwise by the Tribunal in accordance with the Rules or where the hearing is to be held electronically.

64. The Tribunal, in its discretion, and upon a motion made in public, may order that part of a Hearing be closed to the public.

Access to Documents and the Tribunal Record

65. The Tribunal shall maintain a record for each of its Hearings which shall include the application or notice of appeal and supporting documents, all documents filed in the proceeding, orders, transcripts (if any), exhibits and the Tribunal's decision. Unless otherwise ordered by the Tribunal, all persons are entitled to have reasonable access to the Tribunal's public record.

66. Where appropriate, the Tribunal may order all or part of a document to be marked "confidential", in which case it shall not form part of the public record.

WITNESSES

Summons to Witness

67. For oral and electronic hearings, the Tribunal may issue a summons to a witness on its own initiative or upon the request of a party, in a form approved by the Tribunal. The summons may require the giving of evidence under oath or affirmation and the production of necessary documents and things.

Technical and Opinion Witnesses Appointed by the Tribunal

68. At the request of a party or on its own initiative, the Tribunal may retain any person having professional, technical or other special knowledge and expertise to give evidence in respect of any matter before it.

WRITTEN AND ELECTRONIC PROCEEDINGS

69. Where permitted by law, the Tribunal may decide in its discretion to conduct any part of the proceedings in person, by way of a written Hearing, or electronically by video or telephone conference.

APPLICATIONS FOR LEAVE TO APPEAL UNDER SECTION 38 OF THE ENVIRONMENTAL BILL OF RIGHTS, 1993

70. Despite the provisions of the *Statutory Powers Procedure Act*, an application for leave to appeal under Part II of the *Environmental Bill of Rights, 1993* shall be made and disposed of wholly in writing, except to the extent that the Tribunal directs otherwise.

CORRECTION OF ERRORS

70. The Tribunal may at any time correct a typographical error, error of calculation, misstatement, ambiguity, technical error or other similar error made in its decision, direction or order.

SERVICE OF NOTICE OF APPEAL/JUDICIAL REVIEW

72. A party appealing a decision of the Tribunal shall file a copy of the notice of appeal with the Tribunal Secretary at the time of the filing. Similarly, a notice of application for judicial review shall be served on the Tribunal Secretary as the representative of the Tribunal.

COSTS

73. In a proceeding in which the Tribunal has statutory authority to award costs, parties are required to make every effort to negotiate a costs settlement. Applications for a costs award can be submitted to the Tribunal only when a negotiated settlement cannot be reached. Negotiated settlements do not require Tribunal review or approval.

74. A costs application may be filed with the Tribunal at any time prior to the conclusion of the Hearing, or no later than within 30 days from the date of the issuance of the decision and reasons therefor, or final order.

Appendix A - *Definitions*

In these Rules, and in the Practice Directions, Guidelines and Forms, unless the context requires otherwise,

"Appellant" means a person who has by notice required an appeal hearing, other than a Hearing under section 38 of the *Environmental Bill of Rights, 1993*;

"Applicant" includes a party who brings a motion or requests other relief within a proceeding and a person who brings an application for leave to appeal under section 38 of the *Environmental Bill of Rights, 1993*;

"Approval" includes a certificate of approval;

"Chair" means the Chair of the Environmental Review Tribunal;

"Conference" means a meeting conducted by Tribunal staff or a Tribunal member which is part of the proceedings, but not part of the Hearing, held for several purposes, including the scoping of issues, the scheduling of delivery of disclosure documents, and the facilitation of a mediation or settlement of some or all of the issues in dispute;

"Director" means the Director referred to in sections 1 and 81(3) of the *Environmental Protection Act*, sections 1 and 5(1) of the *Ontario Water Resources Act*, and sections 1(2) and 3(1) of the *Pesticides Act*;

"Document" includes:

(a) a Notice of Hearing, and a Notice of Preliminary Hearing; forms, correspondence, memoranda, files, books of account, agreements, reports, charts, graphs, and any other written or pictorial communication;

(b) a sound recording, videotape, photograph, map, plan, survey or like thing;

(c) information recorded or stored by means of any device, including computer files; and

(d) facsimiles or copies of documents;

"electronic hearing" means a hearing held by conference telephone call or some other form of electronic technology allowing persons to hear one another;

"Fax" means electronic transmission of a facsimile of a document;

"File" means to send or deliver a document to the Tribunal;

"Hearing" means the opportunity to present one's case before the Tribunal;

"Instrument-holder" means the person to whom the Director has issued an instrument as defined in the *Environmental Bill of Rights, 1993* where an application has been made under section 38 of that Act;

"Joint Board" means a joint board established under the *Consolidated Hearings Act*;

"Mediation" includes all forms of facilitation, including alternative dispute resolution, settlement conferences and other forms of negotiation;

"Motion" means a request for the Tribunal's ruling or decision on a particular issue at any stage within a proceeding or intended proceeding, and includes an application for a stay or an interim stay of an order or decision of the Director or of the Tribunal;

"Particulars" include clarification of the remedy, decision or order requested; clarification of the reasons given for requesting the remedy, decision or order; and a statement or clarification of the material facts upon which a party relies in support of any allegation;

"Participant" means a person who is named as a participant under Rule 19;

"Party" means a person who is named as a party under Rule 14;

"Person" includes a corporation and a person as defined in the *Environmental Assessment Act*, *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Pesticides Act*, the *Environmental Bill of Rights, 1993* and the *Consolidated Hearings Act*;

"Presenter" means a person who is named as a presenter under Rule 22;

"Property" includes a facility, proposed waste disposal site, sewage lagoon, sewage treatment plant, sewer main, and right-of-way for a utility or transportation route;

"Proponent" means a person who has applied for approval of an undertaking pursuant to the *Environmental Assessment Act*, approval of a waste disposal site under Part V of the *Environmental Protection Act* or approval of a sewage works under the *Ontario Water Resources Act*;

"Public Record" includes any notice requiring a public hearing; the Director's order or decision appealed to the Tribunal; notices of the Hearing and of Preliminary Hearings; memoranda of agreement at a Conference; any written questions and answers and witness statements that have been referred to or entered in evidence; notices of motion and affidavit filed in support of motions; transcripts of evidence and argument; exhibits; interim orders of the Tribunal; and the Tribunal's final decision and/or order;

"Representative" means legal counsel or an agent who is authorized to represent a person in a proceeding;

"Serve" means to send or deliver a document to parties, participants or other persons;

"Serve and file" means to serve a document on parties, participants or other persons and file it with the Tribunal;

"Tribunal" means the Environmental Review Tribunal and includes a panel or individual member of the Tribunal.

Approved May 31, 2002.

Practice Directions, Guidelines and Forms for the Environmental Review Tribunal

Practice Directions

Practice Direction on Notice of Hearing and Notice of Preliminary Hearing

1. The following persons shall receive a notice of Hearing or a notice of Preliminary Hearing :

   (a) those persons identified in the releovant statute;

   (b) all owners of the property or facility and other persons having an interest in the property who may be affected by the Tribunal's decision;

   (c) all owners of land within 120 metres of the property;

   (d) clerks of the local municipality, township, district, Regional Municipality or County in which the property is situated;

   (e) such other persons as determined by the Tribunal.

2 The Tribunal may require an appropriate party to give notice at their own or another party's cost, and may:

   (a) provide directions for giving notice;

   (b) approve the form and content of the notice; or

   (c) prepare the notice itself.

Form and Content of Notice

3. A notice of Hearing and a notice of a Preliminary Hearing shall be in writing unless the Tribunal otherwise directs, and shall include the following information:

   (a) identification of the applicant(s) and, for appeal hearings, the Director;

   (b) the name, address, telephone number, fax number and e-mail address, if any, of the person giving notice;

   (c) the file number assigned to the proceeding by the Tribunal;

(d) a reference to the statutory provision or Rule under which the proceedings are being held;

(e) a statement of the purpose of the proceedings;

(f) for oral proceedings,

(i) a statement of the time and place of the proceedings; and

(ii) a statement that if the person notified does not attend and identify herself or himself to the Tribunal, the Tribunal may proceed in that person's absence and that the person is not entitled to any further notice of the motion, settlement conference or the hearing, as the case may be;

(g) for a written Hearing, the additional information set out in the Rules;

(h) for electronic Hearings, the additional information set out in the Rules;

(i) for Preliminary Hearings,

(i) a statement that if the person other than a party does not attend the Preliminary Hearing and identify himself or herself to the Tribunal or file written notice of their interest in the proceedings, the Tribunal may proceed in the person's absence and the person will not be entitled to any further notice in the proceedings, including notice of the Hearing;

(ii) a statement that the member or panel conducting the Preliminary Hearing may make orders with respect to the conduct of the proceedings which will be binding on all present and future parties; and

(iii) a statement in the French language that a person requiring French language services at the Preliminary Hearing should make the request to the Tribunal Secretary as soon as possible and at least five days before the Preliminary Hearing.

4. In addition to notice to parties or other persons to whom notice must be given under these Rules, where it is required by law or the Tribunal considers it appropriate that the public be informed of the proceeding, the Tribunal or the Tribunal Secretary may require that notice be given to the public:

(a) by publication on at least one occasion in a newspaper having general circulation in the locality of the property or facility that the subject-matter of the hearing deals with; or

(b) in any other manner the Tribunal considers appropriate in the circumstances.

5. The public notice referred to in section 4, above, shall be published both in English and French in the areas of the province designated as bilingual in the *French Language Services Act*.

Deadlines for Giving Notice

Unless otherwise directed by the Tribunal:

6. A notice of the Hearing shall be given at least 30 days before the Hearing is to commence, unless otherwise directed by the Tribunal.

7. A notice of Preliminary Hearing or notice of settlement Conference shall be given at least seven days before the Preliminary Hearing or settlement Conference is to commence;

8. A notice of motion, and all supporting material, shall be given at least seven days before the motion is to be heard.

Practice Direction on Constitutional Questions Including Charter Rights

1. **Procedure before the hearing by the Party**

Parties who intend to raise issues under the Canadian *Charter of Rights and Freedoms* or other constitutional issues are required by section 109 of the *Courts of Justice Act* to inform the Attorney General of Canada and the Attorney General of Ontario of these issues as well as all other parties to the hearing. A Notice of Constitutional Question to the Attorneys General should be given in accordance with the attached form.

When completing the attached form, please be sure to include the names and addresses of counsel appearing for all other parties and of other parties appearing in person.

The Notice must be served on the Attorneys General and copied to the other parties and the Tribunal as soon as the circumstances requiring it become known to the party and, in any event, at least fifteen days before the question is to be addressed by the Tribunal. (The Ministry of the Attorney General and the Attorney General of Canada will require sufficient time to prepare submissions in response to constitutional questions or *Charter* arguments. The Tribunal recommends that the party raising the constitutional questions or *Charter* arguments should file the Notice with the Ministry of the Attorney General and with the Attorney General of Canada, as well as with the other parties and the Tribunal, more than the required 15 days prior to the hearing date.) The Tribunal has no jurisdiction to grant a remedy unless the notice has been given. The Tribunal may refuse to address the issue if no or insufficient notice has been given.

The Notice may be filed with the Ministry of the Attorney General by sending it to:

The Attorney General of Ontario
Constitutional Law Branch
720 Bay Street, 8th Floor
Toronto, ON M5G 2K1
Fax: (416) 326-4015

To notify the Attorney General of Canada, send the Notice to:

The Attorney General of Canada
Suite 3400, Exchange Tower
Box 36, First Canadian Place
Toronto, ON M5X 1K6
Fax: (416) 973-5004

There is no obligation on parties other than those raising constitutional questions or *Charter* issues to communicate with the Attorneys General.

The mandate of the Ontario Attorney General under section 5(c) of the *Ministry of the Attorney General Act* includes the representation of the public interest. The provincial and federal Attorneys General have the option of not taking part in the Tribunal's proceedings, of filing material only, or of both filing material and appearing at hearings.

All filings made by the Attorneys General shall be available in the Tribunal's office for review.

2. **Procedure at the hearing**

As no court has yet ruled on the question of whether the Tribunal has jurisdiction to decide constitutional questions or *Charter* issues, the party raising the constitutional issue or *Charter* argument should be prepared to argue whether the Tribunal has this jurisdiction before proceeding further, if the Tribunal requests such arguments.

If the Tribunal rules that it has jurisdiction to adjudicate these issues, the Tribunal may choose to hear the arguments as preliminary matters before beginning to hear evidence, particularly if the constitutional question or *Charter* argument deals with the Tribunal's jurisdiction.

However, if the Tribunal determines that making a decision on the constitutional question or *Charter* argument will require it to have an extensive factual basis that will be provided by the evidence at the hearing, the Tribunal may wish to hear the arguments regarding the constitutional question or *Charter* issue later in the hearing and to make a decision later in the hearing or at the end of the hearing.

Even if the Tribunal has heard the arguments at the beginning of the hearing, it may choose to reserve its decision until the end of the hearing if it appears that this is advisable; for example, to avoid delay in fulfilling the Tribunal's mandate or to ensure that a court has a complete record when considering issues arising out of the Tribunal's proceedings.

A copy of the notices sent to the Attorneys General shall be filed with the Tribunal at the hearing together with proof that notice has been given. Proof that notice was given to the Attorneys General may be provided by filing an affidavit of service or by filing a statement of service in accordance with the Tribunals' *Practice Direction on Service of Documents*.

A copy of any response received from the Attorneys General shall also be given to the Tribunal.

These documents should be presented at the hearing itself, not sent to the Tribunal in advance.

ENVIRONMENTAL REVIEW TRIBUNAL

(General heading)

NOTICE OF CONSTITUTIONAL QUESTION

The *(identify party)* intends to question the constitutional validity (*or* applicability) of *(identify the legislative provisions)* in an appeal (*or* application). The question is to be heard on *(day)*, *(date)*, at *(time) (if date and time are known)*, at *(address where hearing will be held)*.

The following are the material facts giving rise to the constitutional question: *(Set out concisely the material facts that relate to the constitutional question. Where appropriate, attach relevant documents)*.

The following is the legal basis for the constitutional question: *(Set out concisely the legal basis for each question, identifying the nature of the constitutional principles to be argued.)*

(Date)

(Name, address and telephone number of solicitor or party)

TO: The Attorney General of Ontario
Constitutional Law Branch
8th Floor, 720 Bay Street
Toronto, Ontario M5G 2K1
Fax: (416) 326-4015

The Attorney General of Canada
Suite 3400, Exchange Tower
Box 36, First Canadian Place
Toronto, Ontario M5X 1K6
Fax: (416) 973-5004

(Names and addresses of counsel for all other parties and of all other parties acting in person)

Tribunal Secretary
Environmental Review Tribunal
P.O. Box 2382, 2300 Yonge Street, Suite 1201
Toronto, Ontario M4P 1E4
Fax: (416) 314-4506

(This notice must be served at least 15 days before the question is to be addressed by the Tribunal.)

Practice Direction on Service of Documents

Methods of Giving Notice

1. A document may be served in one of the following ways:

   (a) by personal delivery;

   (b) by regular, certified or registered mail;

   (c) by courier service;

   (d) by fax, but only if the document, including any cover sheet, does not exceed twelve pages, or where longer, if the receiving party consents;

   (e) by e-mail; or

   (d) by any other method that the Tribunal or the Tribunal Secretary may direct.

2. A document sent by fax shall include a cover page or a notation on the first page of the notice indicating:

   (a) the sender's name, address and, fax number;

   (b) the name and fax number of the person to whom the notice is given;

   (c) the date and time the document is transmitted;

   (d) the total number of pages transmitted including the cover page, if any; and

   (e) the name and telephone number of a person to contact in the event a problem arises with the transmission.

3. If the party has a representative for the purposes of the proceedings, the document shall be sent to the representative rather than the party, unless the Tribunal otherwise directs.

4. Proof of service shall be demonstrated by filing an affidavit of service or a Statement of Service in *Form 1*.

When Service of Document is Effective

1. Service of a document will be considered to be effective when delivered:

   (a) by personal delivery before 4:00 p.m., on the day of delivery, and after that time, on the next day;

   (b) by registered, certified, or regular mail, on receipt or on the fifth day (or in relation to hearings under the *Ontario Water Resources Act*, section 51(2), the seventh day) after the day of mailing, whichever is sooner;

   (c) by courier, including Priority Post, on receipt, or on the second day after the document is given to the courier by the party giving notice, whichever is sooner;

   (d) by fax, if received before 4.00 p.m., on the same day as the transmission, and after that time, on the next day;

   (e) if delivered by any other means directed by the Tribunal, notice is effective within the time frames specified by the Tribunal or its Secretary.

2. If the person to whom notice, other than the notice requiring a Hearing, is being given or to whom a document is being served or provided establishes that he or she did not, acting in good faith, through accident, absence, illness or other cause beyond his or her control receive the notice or document until a later date, the Tribunal may deem giving of notice or service or provision of the document to be effective at a later date or may extend the date for giving of notice or service or provision of the document.

3. Where permitted by law, the Tribunal may award costs for the late service of documents if prejudice to either the Tribunal or other parties has occurred.

Practice Direction on Hearing Documents

1. Specifications

Every document to be filed with the Tribunal shall meet the following standards:

(a) The text shall be printed, typewritten, written or reproduced legibly, with double spaces between the lines and a margin of approximately 40 millimetres on the left-hand side;

(b) Measurements shall be expressed in a form that is most easily understood.

(c) Each document shall have all pages numbered consecutively (including appendices, tables, figures, etc.) or sections tabbed with the pages within each section numbered consecutively.

(d) The number of copies of each document to be filed with the Tribunal shall be sufficient to provide a copy for each panel member, the exhibit file and the record file. The Tribunal may also require a document to be filed in electronic form.

(e) Visual and graphic documents larger than 8 ½ " x 14 " shall be reduced in size to 8 ½ " X 14" or 8 ½ " x 11" for each panel member and for the record file.

2. Witness Statements

The parties and participants shall serve on each other before the commencement of the Hearing a witness statement that shall include, where applicable:

(a) the name, address and telephone number of the witness;

(b) the qualifications of the witness, where appropriate;

(c) whether or not the witness has an interest in the application or appeal and, if so, the nature of the general or special interest;

(d) whether the evidence will be factual evidence or, if the witness is qualified, opinion evidence;

(e) whether the witness has some special skill which he possesses by reason or experience or study which qualifies him to give such evidence;

(f) an acknowledgement that the witness intends to appear before the Tribunal and be subject to direct examination and cross-examination;

(g) the date of the statement;

(h) a summary of the findings, opinions, conclusions and recommendations of the witness;

(i) reference to those portions of other documents (citing page and paragraph number) which form an important part of the findings, opinions, conclusions and recommendations of the witness, or which will be referred to by the witness in oral testimony;

(j) details and explanation of any agreements made by the parties;

(k) a summary of those answers to interrogatories to or from other parties which will be relied upon at the Hearing;

(l) where applicable, a discussion of proposed conditions of approval which are in controversy among the parties or agreed upon conditions which may be related to issues in dispute.

A witness shall avoid repetition or duplication with other documents or witness statements.

3. Reports

The contents of reports filed with the Tribunal by parties and participants shall comply with the requirements of:

(a) the Guidelines for Technical and Opinion Evidence;

(b) with the appropriate changes, the requirements for Summary Reports described below.

4. Document Lists

For Hearings other than appeal and leave-to-appeal Hearings, the applicant shall file with the Tribunal a list of documents that identifies those documents which are in the applicant's possession, control or power and indicate those documents that are:

(a) out-of-date and of little current value to the Hearing;

(b) more recent and directly related to the issues to be determined at the hearing;

(c) in preparation, and the date of expected availability;

The applicant shall, in one or two sentences, indicate the subject-matter or contents of each document, and how it relates to the issues to be determined at the Hearing.

5. Summary Reports

For Hearings other than appeal and leave-to-appeal Hearings, the applicant shall file with the Tribunal a Summary Report (no longer than one volume) that discusses all of the various issues and areas of study. It shall be divided into a separate chapter for each topic. It shall constitute the basis for preparation for and discussion at the Preliminary Hearing, and be sufficiently comprehensive for that purpose. The Tribunal and any person applying for party or participant status will be expected to review the Summary Report in advance of the Preliminary Hearing.

A summary report shall meet the following requirements:

(a) its content and form shall be comprehensive, current and compact;

(b) the introductory chapter shall include the background, description of the undertaking, history of the undertaking and the process which has been followed (subsequent chapters should not repeat the background or history of the undertaking)

(c) the chapters may be based on the various reports and studies which have already been produced - they could be a reproduction of the summaries which were included in those reports and studies, except where revisions are necessary so that the information provided is current;

(d) the text shall include references (document name, page and paragraph numbers) to the material on the document list;

(e) the writing-style shall be clear and concise

(f) each chapter shall include only that information which is directly related to the findings, opinions, conclusions and recommendations in the summary;

(g) each chapter shall include a list of documents (reports, studies, correspondence, plans, etc.) for the reader who wishes more information; and,

(h) the summary report shall be edited in order to eliminate all overlap, repetition and inconsistencies.

6. Disclosure of Documents and Things

1. All parties shall provide without charge to all other parties within the time directed by the Tribunal, and in any event no later than 15 days before the commencement of the Hearing a copy of every document relating to any matter in issue in the Hearing that is in the possession, control or power of a party regardless of whether the party providing the document intends to rely upon that document, unless privilege is claimed in respect of that document.

2. All parties shall provide without charge to all other parties within the time directed by the Tribunal, and in any event no later than 15 days before the commencement of the Hearing, an opportunity to inspect every object in the possession, control or power of a party which that party intends to refer to or enter into evidence at the Hearing, unless privilege is claimed in respect of that thing.

3. A party that claims privilege in respect of a document or thing shall disclose the existence of that document or thing to the other parties. The Tribunal may inspect the document or thing to determine the validity of the claim.

4. Any document or thing that is provided, and any witness statements, reports and other material produced for the purpose of preparation for a Hearing shall not be released by any party to whom they have been produced to anyone but the party's representatives, advisors, or witnesses requiring them for the purposes of preparation of that party's case unless and until the documents or objects have been received in evidence by the Tribunal.

5. A representative, advisor, or witness to whom these documents have been released for the purposes of case preparation shall not disclose their contents to anyone else, unless and until the documents or objects have been received in evidence by the Tribunal.

Practice Direction on Written Questions and Answers

In exceptional circumstances, the Tribunal may direct that the pre-hearing examination of a party by another party be conducted through written questions and answers, and may specify the dates by which the questions are to be asked and answered, and may refer to the following:

1. The parties shall engage in the interrogatory process in an expeditious and cooperative manner, in order to ensure full and timely disclosure with the minimum amount of effort and cost.

2. The subject matter of interrogatories shall be restricted to those issues which the Tribunal has identified for consideration at the Hearing.

3. The scope of interrogatories shall be confined to that information which is relevant and necessary to assist the inquiring party to be reasonably informed about the issue under consideration.

4. The Tribunal shall not be sent copies of interrogatories and answers to interrogatories at the time they are exchanged by the parties.

5. Parties shall provide detailed, responsive and complete answers to interrogatories, along with copies of all related documentation.

6. Where a receiving party is unable to answer an interrogatory without further clarification or direction from the inquiring party, it shall promptly communicate with the inquiring party in order to resolve the difficulty.

7. Where a dispute arises with respect to interrogatories, or the answers to interrogatories, the parties shall promptly communicate with each other in order to resolve the dispute in a cooperative and efficient manner.

8. In the event that such disputes cannot be resolved by the parties, the Tribunal will determine the matter in a summary fashion. Upon finding that a party has failed or refused to deal with the interrogatory process in a manner which is responsible and reasonable the Tribunal may:

   (a) adjourn the date for the commencement of the Hearing until the interrogatory process has been completed;

(b) order the party or its witnesses to submit to examination on oath before a reporter, or before the Tribunal;

(c) where permitted by law, order the party to forthwith pay costs;

(d) make such other order as may seem just.

9. The Tribunal may order the parties to meet and exchange information in order to satisfy any outstanding interrogatories.

10. To the extent possible, the interrogatory process should be completed prior to the commencement of the hearing of evidence.

Practice Direction on Meetings of Consultants

The parties' consultants (including independent consultants, technical or professional staff and advisors) shall have one or more meetings and, where appropriate, communicate directly with each other outside of meetings in order to expedite the Hearing's proceedings in the manner described below:

1. Unless otherwise ordered by the Tribunal, the parties' consultants (including independent consultants, technical or professional staff and advisors) shall have one or more meetings and, where appropriate, communicate directly with each other outside of meetings to:

   (a) exchange all relevant information and documentation related to facts or opinions in dispute;

   (b) discuss all facts or opinions in dispute with a view to reducing or eliminating areas of controversy;

   (c) reach consensus on facts, issues and opinions which do not require a determination by the Tribunal;

   (d) where applicable, develop conditions of approval acceptable to all parties; and

   (e) explore any other means of resolving areas of dispute between the parties.

2. If a consultant fails or refuses to fully cooperate in the process described in paragraph 1 above, a party may file a complaint with the Tribunal and it may deal with the matter in a summary fashion. When a complaint is filed, the Tribunal may:

   (a) adjourn the date of the commencement of the Hearing until the meeting of consultants has been properly concluded;

(b) order or direct the party or its consultant to submit to examination on oath before a verbatim reporter or the Tribunal;

(c) where permitted by law, order that costs be paid forthwith by the party who retained or employed the consultant; and/or;

(d) make any other order as the Tribunal considers to be just.

3. Parties and their representatives may attend a consultants' meeting, where practical, as long as their attendance will not, in the opinion of the Tribunal, interfere with the scheduling, progress or outcome of the meeting.

4. Statements made during the process outlined in paragraph 1 shall not be used or referred to during the Hearing, or communicated to anyone else, unless all of the parties consent.

5. The parties' consultants shall report back to the parties or their representatives with information that will assist them in reaching agreements, and identifying, understanding and focussing on the most important considerations with respect to each issue which remains in dispute.

6. A report on the progress, but not the content, of these meetings may be required by the Tribunal to ensure that this process is occurring in an appropriate manner.

Practice Direction on Applications for Leave to Appeal under the Environmental Bill of Rights

Written Hearings

1. The Tribunal's rules governing written hearings apply to an application for leave.

Serving and Filing by Fax

2. (1) Subject to paragraph 2 (2), wherever possible, participants shall send correspondence and materials needed to process an application for leave to the Tribunal and to each other by fax or if this is not feasible, by courier, and shall cooperate with each other to allow exchange of documents by fax.

(2) If the material to be sent by fax is more than twelve pages long, including any cover page, the material may be sent by fax only if the receiving party has consented.

(3) All evidence, submissions, cases and legislation upon which parties rely shall be filed with the Tribunal in duplicate.

Serving and Filing Notice of Application for Leave

3. (1) The applicant for leave to appeal shall serve the Environmental Commissioner with a copy of the leave application.

(2) Service of a document under paragraph 3 (1) shall be made on or before the day on which the application is filed with the Tribunal.

(3) The applicant for leave to appeal shall promptly serve the Director who issued the instrument that is the subject of the leave application and the instrument-holder with a copy of the leave application.

Contents of Application for Leave

4. When filing an application, the applicant shall include:

(a) A copy of the instrument issued by the Director that is the subject of the application;

(b) A copy of all documents and a statement of all facts upon which the applicant relies in support of the application;

(c) A statement describing the applicant's interest in the decision which the applicant seeks leave to appeal and any facts that the applicant wants taken into account in deciding whether he or she has an interest in the decision.

(d) For each of the concerns raised in the notice of application for leave to appeal,

(i) a statement of the reason(s) why there is good reason to believe no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision; and

(ii) a statement of the reason(s) why the decision could result in significant harm to the environment.

Additional Information Required

5. (1) In its notice of application for leave, in addition to the information required by paragraph 4, the applicant should provide the following information:

(a) The portions of the instrument or each term or condition in the instrument in respect of which the leave to appeal is sought;

(b) The grounds on which the applicant intends to rely at the hearing, in the event that the leave to appeal is granted, in relation to each portion, term or condition that the applicant is seeking leave to appeal.

(2) If the applicant is unable to submit all the information required by paragraphs 4 and 5:

(a) when filing the application, the applicant shall state this, and shall state when the additional information will be filed.

(b) The date for filing all additional information shall be no later than five days after the application is filed, unless the applicant explains in writing why this is impossible and obtains the Tribunal's consent.

Evidence on Applications for Leave

6. (1) Written evidence upon which any of the participants in an application for leave intend to rely need not be given under oath or provided in the form of an affidavit, unless the Tribunal orders this. However, the person submitting the evidence shall state in writing that he or she solemnly affirms that all the evidence submitted and all statements made in his or her application are true, and shall sign this statement.

(2) Where the written evidence reveals factual disputes or raises questions about the credibility of witnesses, the Tribunal may direct that witnesses be cross-examined on their evidence.

Response by Director and Instrument-Holder

7. Promptly after receiving the application and any additional information to be filed, the Director and the instrument-holder shall:

(1) inform the Tribunal and the applicant whether they intend to respond, and

(2) (a) if they intend to respond, specify the date by which their response will be filed, and

(b) identify the person who will represent them in responding to the application.

Delay in Filing Responses

8. If the Director or the instrument-holder intends to respond more than ten days after the applicant has filed all information on which the applicant relies, this will be deemed to make it impossible for the Tribunal to make its decision within 30 days after the application was filed, and therefore, he or she shall:

(1) request consent to file later, and

(2) notify the Tribunal, and all other parties whether there are unusual circumstances that require the Tribunal to make a decision more than 30 days after the application was filed.

Reply by Applicant

9. Where the Tribunal is satisfied that a response includes new evidence or raises new issues that the applicant could not be expected to have anticipated and addressed when filing the application for leave and supporting information, the Tribunal shall provide the applicant with an opportunity to reply.

Deadline for Tribunal's Decision

10. (1) The Tribunal shall make its decision within 30 days after the day on which the application is filed, unless the Tribunal determines that, because of unusual circumstances, a longer period is needed.

(2) If the Tribunal determines that a longer period is needed, it shall give notice of that determination to the applicant, the Environmental Commissioner and any other person that the Tribunal considers should receive the notice.

(3) Notice under paragraph 10 (2) shall state when the Tribunal expects that it will make a decision on the application.

Where Tribunal Grants Leave

11. Where the Tribunal grants leave to appeal:

(a) the leave may be granted in whole or part and subject to any conditions the Tribunal considers appropriate;
(b) the decision may contain any procedural directions the Tribunal considers appropriate for the appeal and may add other parties to the proceeding and allow participation by other persons; and
(c) the procedural directions will specify whether the appeal will be conducted orally, electronically or in writing.

Appeal Procedure

12. (1) The appeal shall be conducted in accordance with any procedural direction made under paragraph 11 unless otherwise directed by the member or panel conducting the appeal.

Guidelines

Guideline on Written and Electronic Hearings

The Tribunal may decide to conduct any part of the proceedings in person, by way of a written Hearing, or electronically by video or telephone conference in its discretion, and in coming to its decision, may consider any relevant factors, including:

(a) the suitability of a written or electronic hearing format considering the subject matter of the hearing;

(b) whether the nature of evidence is appropriate for a written or electronic Hearing;

(c) the extent to which the matters in dispute are questions of law;

(d) the convenience of the parties, including any anticipated prejudice to a party;

(e) the cost, efficiency and timeliness of proceedings;

(f) avoidance of unnecessary length or delay;

(g) ensuring a fair and understandable process;

(h) the desirability or necessity of public participation or public access to the Tribunal's process; and

(i) the fulfilment of the Tribunal's statutory mandate.

Guideline on Compelling a Witness to Attend a Hearing

Legislative background:

Section 12 of the *Statutory Powers Procedure Act* permits the Tribunal to issue a summons to require a witness to attend a hearing and give sworn or unsworn evidence and to produce documents, records, and things which are relevant and admissible. Section 12 of the *SPPA* provides as follows:

12.(1) A tribunal may require any person, including a party, by summons,

(a) to give evidence on oath or affirmation at an oral or electronic hearing; and

(b) to produce in evidence at an oral or electronic hearing documents and things specified by the tribunal, relevant to the subject-matter of the proceeding and admissible at a hearing.

12.(2) A summons issued under subsection (1) shall be in the prescribed form (in English or French) and,

(a) where the tribunal consists of one person, shall be signed by him or her;

(b) where the tribunal consists of more than one person, shall be signed by the chair of the tribunal or in such other manner as documents on behalf of the tribunal may be signed under the statute constituting the tribunal.

12.(3) The summons shall be served personally on the person summoned.

12.(3.1) The person summoned is entitled to receive the same fees or allowances for attending at or otherwise participating in the hearing as are paid to a person summoned to attend before the Superior Court of Justice.

Tribunals' Rules of Practice

The Tribunals' Rules of Practice provide for the issuance of a summons to witness as follows:

67. For oral and electronic hearings, the Tribunal may issue a summons to a witness on its own initiative or upon the request of a party, in a form approved by the Tribunal. The summons may require the giving of evidence under oath or affirmation and the production of necessary documents and things.

Procedure to Follow

A party or representative who wishes to summon a person to give testimony or to produce documents at a hearing shall prepare and complete a *Summons to Witness* in Form 2 (oral hearings) or Form 3 (electronic hearings) and submit it to the Tribunal Secretary for signing by the Chair or designate.

The party, solicitor or agent representing a party should request a summons as early as possible before the hearing so that it can be served on the witness in time to allow them to arrange to attend the hearing, and should include in their written request the following information:

1. the name of the witness and their address for service;
2. a brief summary of the evidence to be given by the witness;
3. an explanation of why the evidence of the witness would be relevant and necessary:

4. details of any documents or things which the witness should be required to bring to the hearing; and

5. why the summons is required

The Tribunal Secretary shall present the prepared *Summons* to the Chair or designate for his or her signature, and the Chair may sign the *Summons* as requested.

In some cases, the Chair may choose not to decide whether to issue a summons until the start of the hearing, after hearing the requesting party's explanation, and asking any questions. In other cases, where a summons has been issued before the hearing, the Member conducting the hearing may decide that the summons should be cancelled or amended, or if the witness is present, they may be excused from remaining. For example, the Member may decide that some of the documents which the witness was required to bring to the hearing will have no relevance to the facts in issue, and excuse some that were not produced.

A summons to witness shall be served on the witness by the party, solicitor or agent requesting the summons, personally and, at the time of service, attendance money in the amount provided under the Rules of Civil Procedure shall be paid or tendered to the witness.

Guideline for Tribunal Appointed Facilitators and Mediators

Preface

Environmental disputes often present difficult situations involving many parties and complex and conflicting values, interests and positions. In those disputes which come before it, the Tribunal is given decision-making (or adjudicative) power under Ontario environmental protection legislation, such as the *Environmental Assessment Act*, the *Environmental Protection Act*, the *Pesticides Act*, the *Ontario Water Resources Act* and the *Environmental Bill of Rights, 1993*. The Chair or hearing panel of the Tribunal may decide to appoint a different member of the Tribunal, a staff member, or another individual, to assist the parties in negotiations relating to some or all matters in dispute among them. These negotiations take place outside of the Hearing. Agreements which are put before the Tribunal for approval or ratification will be subject to the requirements of the Tribunal's Protocol for Consideration of Agreements.

Facilitation and mediation can both involve a form of assisted negotiation in the presence of a neutral third party, who assists the parties to deal constructively with the issues in dispute among them. A mediator might take a more active approach in helping the parties to achieve a broader understanding of the controversy, to look at things from a variety of perspectives, to generate options and to construct solutions. Some would define a facilitator as having the more limited

role of organizing meetings and assisting the parties to communicate more easily and effectively. The differences are inconsequential for the purpose of these guidelines. The terms "mediator" and "mediation" will be used hereafter in this document to include facilitator and facilitation.

These guidelines have been developed in an effort to communicate the Tribunal's expectations of the conduct of both the parties and mediator in those cases where a mediator has been appointed. To the extent that it is imperative that the Tribunal's adjudicative role not be compromised by the appointment of a mediator, the guidelines may represent a departure from mediation principles, processes and practices followed elsewhere. These guidelines are not designed for those situations where, with the consent of the parties, the mediator is also constituted as the Hearing panel (a process sometimes referred to as "med-arb").

The Guidelines

1. The most important outcome of a mediation process is an understanding by the parties of the position and interests of other parties, information sharing and constructive negotiations. It is not a requirement that the parties reach agreement on some or all of the issues which have been the subject-matter of the process.

2. It is generally desirable that all parties develop and agree to the mediation process.

3. The Tribunal expects that negotiations and agreements will reflect the primary importance of environmental conservation and protection, and other objectives expressed in the applicable legislation and regulations.

4. The content of discussions during the mediation process (and documents prepared as part of the mediation process) are privileged, and will not be communicated at any time by the mediator to non-parties, the public, the media or the panel, except with the consent of all parties.

5. The notes, records and recollections of the mediator are confidential and shall not be subject to disclosure in subsequent Tribunal or other proceedings, and shall not be admissible as evidence.

6. The mandate of the mediator shall include the following:

   (a) a review of the issues and an assessment of the willingness of the parties to negotiate (preparation of a conflict assessment);

   (b) facilitating discussion and sharing of information;

(c) organizing, scheduling and chairing meetings and developing agendas;

(d) imposing deadlines in the mediation process, when necessary;

(e) developing agreement on the issues to be addressed during the mediation;

(f) designing the negotiation process with the parties;

(g) seeking to reduce conflict and increase co-operation and trust among the parties and assisting the parties in an impartial manner to conduct constructive negotiations and pursue creative problem-solving;

(h) working with the parties to ensure that they fully understand each other's positions even when there is no or partial agreement; and encouraging the parties to explore the development of consensus on the issues in dispute, where appropriate;

(i) ensuring that the parties have focussed their attention and hearing preparation on relevant issues and evidence and advising the Tribunal to what extent a Hearing is required;

(j) ensuring that the requirements of the Guideline on Agreements and any Terms of Reference requirements are met;

(k) informing the parties of pertinent Tribunal policy (as stated in Practice Directions, annual reports, decisions and rulings, or other public documents), and Legislative requirements, where appropriate;

(l) identifying relevant environmental or other concerns which have not been addressed or adequately resolved by the parties;

(m) fostering greater understanding of the hearing process;

(n) requiring that the directions contained in these guidelines be followed throughout the mediation, and that the integrity of the process be maintained by all participants (i.e., by striving to make the process work, participating in good faith, etc.).

7. The mediator is not one of the parties, is not a party to agreements which they make, and is not bound by their agreements. The mediator will ensure that negotiations and agreements will not interfere with or undermine the hearing process.

8. (a) Where an agreement is reached, it will be reviewed pursuant to the Tribunal's Protocol for Consideration of Agreements. This review is intended to ensure that the agreement represents the combined interests of the parties, those affected by the agreement, regulatory authorities and other government agencies, and that the project complies with applicable legislation and regulations (as well as government policies, where appropriate) and is in the public interest. The parties should refer to the Guideline for more detail

(b) No party or participant who enters the hearing process subsequent to a mediation will be allowed to raise issues in respect of which a mediated agreement has been reached, without leave of the Tribunal.

9. Agreements reached by the parties shall be promptly written up and signed by them, or by their duly-authorized representatives.

10. Communications between the Tribunal and the mediator.

(a) The Tribunal will provide the mediator with Terms of Reference including objectives for the mediation, and the available time allocated for the mediation process. All directions, including any specific instructions, or tasks provided to the mediator by the Tribunal beyond these guidelines (e.g., scoping of issues, developing an efficient hearing schedule), will be included in the Terms of Reference. The mediator will promptly provide a copy of the Terms of Reference to the parties.

(b) The mediator will not report any information disclosed in the mediation process to the Tribunal, except with the consent of all parties.

(c) The mediator will inform the Tribunal whether full or partial agreement has been reached and to what extent a Hearing is required. The Tribunal and the mediator will communicate with each other only in writing, with copies provided to the parties.

11. Communications between the mediator and the parties.

(a) The confidentiality of the parties shall be strictly maintained by the mediator.

(b) The mediator may communicate privately from time to time with individual parties unless the parties agree that there will be no private communications.

(c) The mediator will not advise a party (or anyone else) of information which was received by the mediator from another source, if that information was given on the basis that it would not be disclosed, unless the source subsequently consents to the disclosure. The mediator may elect to refuse to receive information from a source on a non-disclosure basis.

12. The mediator shall, in the event that the parties will be proceeding to a Hearing, work with the parties to ensure that they are ready to proceed on schedule and in a timely fashion. With the consent of the parties, and subject to paragraph 10(b), the mediator will advise the Tribunal panel as to whether the parties are ready to proceed, and include any suitable recommendations.

13. The mediator shall not:

(a) purport to bind the Tribunal to any agreement or arrangement;

(b) do, say or disclose anything which would compromise the neutrality and independence of the Tribunal panel, or undermine its adjudicative role;

(c) provide strategic coaching to individual parties to improve their chances of success before the panel, or champion their cause in any forum.

14. The mediation process should, wherever possible, be scheduled in such a manner as to permit adequate time for the preparation for, and completion of, the mediation, without creating conflict with the hearing schedule.

These guidelines do not constitute a comprehensive code for Chair- or Hearing panel-appointed mediators, and are not intended to exclude the application of generally accepted and/or reasonable practices and principles which do not conflict with them.

Guideline for Consideration of Agreements

As the Tribunal emphasizes the need for agreements among parties, and deals with these in Hearings, the participants in the Tribunal's process look for guidance about how the Tribunal will deal with agreements.

The following discusses a course of action, once a Preliminary Hearing has been commenced or completed, for Tribunal panels in the specific circumstances described. This applies to agreements reached during the course of a Hearing as well as to agreements reached prior to the hearing of oral evidence.

1. When the Tribunal is satisfied that an agreement represents the combined interests of:

   - the proponent
   - those affected (e.g. citizens group, individuals)
   - the regulatory authorities
   - other affected governments (eg. municipalities)

and that the project is consistent with the purpose and provisions of the relevant legislation, and is in the public interest and the interest of the environment, it will accept and formally adopt the agreement.

The Tribunal will determine whether it is satisfied through the documentation provided by the parties (which should be logical and traceable and include the rationale for each aspect of the agreement) and any oral evidence, if required. The Tribunal will identify for the parties what oral evidence, if any, or further documentation it will require.

If the documentation is sufficient and the parties are prepared to waive their right to a Hearing, the Tribunal may decide that a full, formal Hearing is not necessary and accept the agreement and approve the project. Section 4 of the *Statutory Powers Procedure Act* allows for this.

There would in all cases be a preliminary hearing. A public meeting (usually in the form of a public evening session) should be held by the Tribunal before it decides not to hold a full and formal hearing and before it decides to approve the project.

2. If a Hearing is held and a party to an agreement is not in attendance when the settlement is discussed, the Tribunal must be satisfied that the party is, in fact, in agreement.

3. If the Tribunal or anyone who has not been party to the agreement raises an issue that has not been considered, the parties may negotiate a resolution consistent with the process noted above.

4. The MOE (or other relevant regulatory agency) should participate in the negotiations toward an agreement which shows how compliance with regulatory requirements has been achieved. If, however, the regulatory agency has not been involved, but other parties have entered into a consent agreement, the proponent must present evidence on how its proposal meets regulatory requirements. The panel has the responsibility to satisfy itself about adherence to provincial policy and regulations and to consider Ministry policy. For example, in a landfill case the Tribunal should consider:

   - the Provincial Water Quality Objectives for surface water protection;
   - the MOE's Reasonable Use Criteria for groundwater protection;
   - the MOE policy for protecting residential properties from excess noise;
   - the MOE Point of Impingement Standards for air quality protection;
   - the provincial policy for wetland protection;
   - provincial land use policy statements.

If the regulatory requirements are met, the panel must still determine that the public interest is protected.

5. If there is no agreement, then the Tribunal will play its adjudicative role.

In summary, if an agreement can be negotiated within the regulatory framework, the Tribunal must still be satisfied that need has been established and the project is in the public interest. If satisfied, the Tribunal will accept the agreement and approve or amend and approve the project either at/after a Hearing or, if the parties agree to waive their right to a formal Hearing, without a Hearing, but in a written decision.

Guidelines for Technical and Opinion Evidence

In preparing reports and testifying, a witness who gives technical or opinion evidence shall have regard to the following:

The Purpose of these Guidelines

Technical staff, advisors, consultants and "expert" witnesses routinely give scientific and technical information and their professional opinions in reports and testimony on important issues which the Tribunal must resolve. The opinions given usually purport to be the independent professional judgment of the advisor or witness, based on his or her considerable experience and training. The Tribunal relies on the professional integrity and ethics of these witnesses.

The purpose of these guidelines is to assist parties, their representatives, and their witnesses who will give scientific, technical, and opinion evidence to prepare for, and present, evidence to the Tribunal. The Tribunal seeks to ensure the reliability of scientific and technical evidence and opinion evidence provided to the Tribunal. Comprehensive and reliable evidence will promote efficiency and fairness in the Tribunal's process, decrease cost and delay, and make the hearing process less adversarial.

Technical and Scientific Evidence

Many witnesses, particularly government employees, appear before the Tribunal to give evidence of scientific and technical observations, tests, measurements, and estimates. They are able to collect this information because of special training and experience. While these witnesses are often not considered "experts" who interpret scientific and technical evidence and provide opinions, they collect, compile, and to some extent interpret, information that is essential to the Tribunal's understanding of the issues and often forms the basis for "expert" opinion evidence. In these guidelines, these witnesses are referred to as "technical witnesses" and the scientific and technical information they convey is referred to as "technical evidence".

Opinion Evidence

Generally, lay witnesses, including technical staff of companies and government agencies may only state facts, that is, observations made with their physical senses, or in the case of persons with appropriate training, observations made with specialized equipment, for example, taking samples and analyzing them in a laboratory and recording the results. They may not give opinions about the significance of the results of such measurements for environmental quality or human health.

To give opinion evidence, a witness must have specialized education, training, or experience that qualifies him or her to reliably interpret scientific or technical information or to express opinions about matters for which untrained or inexperienced persons cannot provide reliable opinions. Such matters often include whether pollution has caused or is likely to cause significant harm to the environment through air, water, or soil. Such witnesses are often called "expert witnesses". In these guidelines, the Tribunal refers to them as "opinion witnesses".

The Role of the Technical Witness

The Tribunal expects the witness giving technical or scientific evidence to remain within his or her area of competence. The witness should not attempt to interpret the meaning or significance of tests, observations and measurements unless qualified to do so. The witness should disclose in advance to other parties all measurements, tests, observations, and data relating to the issues about which he or she will give evidence, and to disclose in examination-in-chief all information relevant to the issues before the Tribunal, regardless of which party the information appears to favour. Observations, tests or measurements that do not appear to support the position of the party for whom the witness is testifying should also be stated. For example, a lab result should not be withheld because the witness considers it inaccurate or unreliable. Rather, the witness should disclose the result in pre-hearing disclosure and during evidence in chief and should explain why he or she does not rely on it.

The Role of Opinion Witnesses

Opinion evidence from a properly qualified "expert" witness should be based on accurate facts, reliable estimates, and accepted or tested techniques or methods of investigation, measurement, and analysis.

The need for guidelines for opinion evidence and for opinion witnesses to have a proper understanding of their role was commented on in *National Justice Compania Naviera v. Prudential Assurance Co. Ltd. ("The Ikarian Reefer")*, reported at [1993] 2 Lloyd's Law Reports 68. This English court decision listed the duties and responsibilities of expert witnesses in civil cases (at pp.81-2) after noting that despite considerable effort on the part of the judge to reduce the scope of the expert evidence and the length of the trial, a great deal of unnecessary time was nevertheless taken by this evidence. He attributed this to a misunderstanding on the part of some expert witnesses as to their proper role in the hearing process.

This decision was cited with approval by the Ontario Court (General Division) in *Perricone v. Baldassarra*, [1994] O.J. 2199, action 92-CU-60340-CM, at pages 14, 17 and 18. The Ontario Court made the following observations on the role of an expert and the use of an expert's report:

> When the report is overwhelmingly directed to advancing the position of the person engaging the expert's report, the report must be viewed accordingly. ... [The doctor's report] does not contain the requisite indicia of even-handedness from an expert which, to me, is crucial in the discharge of the function of an expert. ... It is a role which is prescribed and, if the person rendering the evidence assumes the role of advocate, he or she can no longer be viewed as an expert in the legally correct sense; instead, he or she must be viewed as advocating the case of a party with the attendant diminishment in the credibility of the report. Expert opinions guide the court but they do not determine the matters which are to be determined by the court. I am not the first to express these concerns about the use of experts' reports.

These guidelines include several duties and responsibilities from the *Ikarian Reefer* decision, and attempt to provide direction to technical and opinion witnesses with respect to the Tribunal's expectations of their conduct and performance. Witnesses should also be familiar with the Tribunal's Rules of Practice relating to expert witnesses. These are available from the Tribunal and should be provided to the witness by the party calling the person as a witness or the party's representative.

The Role of the Tribunal

The decisions that the Tribunal must make involve the public interest and have serious and far-reaching environmental consequences. These decisions must be based on a balanced record, composed of nothing less than totally accurate and reliable technical information and professional opinions, presented in an expeditious hearing process. All parties and their representatives and witnesses have a responsibility to contribute to such a balanced record in an expeditious fashion to assist the Tribunal to fulfil its duty. They are expected to make every effort to comply fully with these guidelines. The Tribunal expects that lawyers and other representatives will provide appropriate direction to witnesses to achieve this result.

Representatives, technical witnesses, and opinion witnesses who are retained to advance the interests of their clients are expected to treat the Tribunal with the same courtesy and respect that they would routinely demonstrate when appearing before Judges in Ontario courts.

1. PRACTICE BEFORE THE TRIBUNAL

(a) The Tribunal expects the opinion witness to provide it with assistance by way of qualified, relevant opinions and accurate information in relation to matters within his or her expertise. Objectivity and impartiality are necessary to assist the Tribunal in making its decision.

(b) Evidence that is influenced by the special interests of a party may be received and considered, but the Tribunal may give this evidence little or no weight.

(c) The witness should express an opinion to the Tribunal only when the opinion is based on adequate knowledge and sound conviction. The witness should be reluctant to accept an assignment to provide evidence for use by the Tribunal if the terms of reference of the assignment do not allow the witness to carry out the investigations and obtain the information necessary to provide such an opinion. A witness who accepts an assignment under these circumstances should advise the Tribunal of the limitations that the terms of reference place on his or her ability to provide the information necessary to assist the Tribunal in making a sound decision or to give informed opinions.

(d) Technical evidence and opinion evidence should be, and should be seen to be, the independent product of the witness uninfluenced as to form and content by the exigencies of litigation, the particular dispute before the Tribunal, and the interests of the witness' client.

(e) The witness must never assume the role of an advocate for a party. Argument and advocacy should be left to counsel or agents presenting the party's case. This does not preclude the vigorous advancement of strongly held scientific or other professional opinions or prevent a duly qualified witness who is also a party from advancing technical and opinion evidence.

(f) The witness has a duty to change his or her opinion where circumstances, such as the receipt of new information, require it. If at any time before the Tribunal issues its final decision, the witness changes his or her view on a material matter for any reason, particularly after having read the reports or listened to the evidence of witnesses for other parties, the change in the information and/or opinion should be communicated to the other parties and the Tribunal without delay. Where reports or documents prepared by the witness contain errors or information which has changed, this must be promptly identified.

(g) However, the witness must not change his or her opinion or change or withhold information to suit the position taken by the party that has retained or employs him/her, or its representative. For example, the witness must not in his or her final report alter the contents or conclusions of draft reports in any way that reduces the accuracy and comprehensiveness of the report to suit a party or its counsel or other representative. Pertinent information in a draft report should not be omitted from the final report or expressed in a different manner to make it appear less or more significant than the witness considers it to be.

2. PREPARING REPORTS

In preparing reports to be used by the witness's employer or client in determining the issues to be raised and the employer or client's position on those issues and for use as evidence, and in testifying before the Tribunal, the witness has the following disclosure duties:

(a) It is the responsibility of the witness to make fair and full disclosure.

(b) The witness should make it clear when a particular question or issue falls outside his or her expertise.

(c) To be useful, the opinion and evidence must provide enough clear information on the assumptions, procedures used, and conclusions drawn to allow comprehension of the report as it stands, and permit fair and efficient cross-examination.

(d) When the witness is providing an opinion or giving evidence on an issue or problem area for which there are differences of professional or scientific opinion (for example, whether there is a threshold of exposure to carcinogens below which they are harmless), he or she has an obligation to make such differences clearly known to the Tribunal and all parties. The witness should make reasonable efforts to be fully informed of those differences.

(e) The witness should state all the material facts and assumptions upon which his or her opinion is based. He or she should not omit to consider and acknowledge material facts which could detract from the opinion. Where the facts are in dispute, the Tribunal expects that the witness will give his or her view of the facts and the proof relied upon before giving the opinion.

(f) Where the opinion and evidence are based on information contained in other documents, detailed references should be provided in any report prepared by the expert, and copies of those documents made available on request before and during the Hearing. Copies of the documents should be brought to the Hearing for reference on cross-examination.

(g) Parties and their representatives questioning their own witnesses are required by the Tribunal's Rules of Practice to ask questions designed to elicit the information required by these guidelines. However, the witness is expected to disclose to the Tribunal and to other parties all significant information and opinions, and errors, shortcomings and limiting factors even if no one has asked for them.

(h) The weight to be given to the evidence of technical and opinion witnesses will be affected by the demeanor of the witness. The witness should give direct answers to questions and should not be evasive while giving testimony, even though the answers may appear to be detrimental to the case of the witness' client or employer. Any effort to avoid answering direct questions could adversely affect the weight assigned to the witness's evidence on the issue or the evidence as a whole.

3. GIVING AN OPINION

(a) When giving an opinion, the witness should state and explain the degree of certainty of the opinion or the level of probability that it is correct. The degree of uncertainty and the reasons for uncertainty should be candidly acknowledged. Uncertainties and assumptions inherent in measurements, estimates, projections and predictions should be clearly identified. The level of confidence or the sensitivity to error must be given.

(b) It is more helpful for a witness to base conclusions on facts and data obtained from those who possess them, rather than construct a series of possibly incorrect assumptions, hypotheses and/or models.

(c) Where there is a lack of consensus with respect to the use of a particular model or formula, the rationale for the chosen approach should be identified.

(d) If the witness' opinion is not properly researched because insufficient data are available, this shortcoming must be stated. Any limiting qualifications to the opinion should be identified. The Tribunal expects to be told when a lack of factual information or experience will increase the probability of inaccurate conclusions or predictions. The witness should avoid speculation where data are insufficient.

(e) Where an estimate falls within a range of reasonable possibilities, based on the same data, the variance within that range should be thoroughly disclosed. Where a prediction can lead to a range of potential impacts, that range should be fully described.

4. PLAIN LANGUAGE

(a) In preparing reports and giving testimony, the witness should take into account that the hearing process is a public process in which reports and testimony must be understood by participants and observers who may not have any significant technical knowledge. Therefore, the language and writing style should be simple and direct and scientific or technical terms and concepts should be explained, where possible, in clear, simple language.

(b) Where specialized language is necessary to accurately convey information, the witness should use it rather than risk misleading or over-simplifying. However, where possible, the witness should avoid the use of scientific terms and jargon and unfamiliar acronyms, or at least fully explain those terms, so that the technical information and opinion can be easily understood. For example, measurements like 10-6 cm/second could be expressed (or explained) in a form more easily understood, such as .86 mm/day or 31 cm/year.

5. ISSUE RESOLUTION

(a) The Tribunal expects that the witness will attempt to adequately address, well in advance of the Hearing, the concerns raised by other parties, in an effort to resolve issues, shorten the Hearing, and save time and expense.

(b) Witnesses for all parties should explore any other means of resolving areas of dispute among the parties. For example, witnesses are encouraged to meet with each other before the Hearing to attempt to reach agreement on technical and scientific facts and opinions, to clarify differences of opinion and to consider whether it is feasible and advisable to reduce disagreements or uncertainty by doing additional studies or obtaining additional information. Where a site inspection may assist the witness to provide more complete and useful information, the witness should make such an inspection.

6. EFFICIENCY

(a) Reports, witness statements and information should be produced in a timely fashion to all parties.

(b) All reasonable requests for answers to written questions (often referred to as "interrogatories") must be answered promptly and thoroughly by the witness.

(c) Notwithstanding the requirements for full disclosure, the witness should make every effort to give succinct answers (while at the same time ensuring that they are direct and complete) to questions put to him or her in written questions and in examination-in-chief, cross-examination and re-examination, and questioning by the Tribunal. Answers should be concise, responsive and focussed on the most essential issues.

(d) During his or her testimony a witness should not be called upon to review fundamental techniques in a painstaking step-by-step fashion, and to read correspondence and other reports line-by-line and page-by-page, unless it is clear that the purpose of such elaboration warrants this expenditure of time.

7. COMPLIANCE

Failure to comply with these guidelines may result in, among other things,

(a) a decision by the Tribunal to decline to accept the opinions or evidence of an otherwise qualified witness;

(b) the evidence may be admitted and heard, but accorded little weight;

(c) the Tribunal may intervene to ensure that the guidelines are respected;

(d) the conduct of the witness may be noted and may be subject to adverse comment in the Tribunal's decision;

(e) if it appears to the Tribunal that there has been a breach of professional standards of conduct, an attempt to mislead, incompetence or negligence, extensive violation of these guidelines, or serious interference with the Tribunal's process, the Tribunal may report this to the professional association or licencing body responsible for compliance with standards of conduct.

Guideline on Request for Adjournment

The Tribunal has the authority to adjourn a hearing where it is satisfied that the adjournment is required to permit an adequate hearing to be held. Adjournments are not granted as of right as they are decisions made in the Tribunal's discretion.

In *Prassad v. Canada (Minister of Employment & Immigration)*, [1989] 36 Admin. L.R. 72, at 84 the Supreme Court or Canada stated that:

> as a general rule, [...] tribunals are considered to be masters in their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice. Adjournment of their proceedings is very much in their discretion.

Relevant Considerations

In deciding whether or not to grant a request for an adjournment, the Tribunal will consider the criteria described in its decision in *Joses Nunes et al. v. Director, Ministry of Environment and Energy*, January 6, 1995 (File 00414.M1):

- the interests of the parties in a full and fair hearing;
- the interests of other members of the local community potentially affected by the matters before the Tribunal who have been notified of the hearing and may have arranged their affairs in the expectation of observing or participating in the hearing;
- the interest of the Tribunal in using the taxpayers' money efficiently; and,
- the integrity of the Tribunal's process.

In addition, the Tribunal will consider:

- the circumstances giving rise to the need for an adjournment;
- the timeliness of the request for the adjournment;
- the position of the other parties on the adjournment request;
- whether an adjournment will cause or contribute to any existing or potential risk of environmental harm;
- the consequences of the Tribunal's decision on the adjournment request, including costs to other parties;

- the public interest in the delivery of the Tribunal's services in an optimum, timely and cost effective manner; and, in particular the direction of the *Report of the Special Review Committee on the Review of Regulatory and Adjudicative Agencies Draft Performance Measures* (March 1999) that "timeliness is critical in the administration of justice" and that hearings be completed within one year of the date of filing.

The Tribunal will not consider the convenience of counsel to be sufficient reason for an adjournment unless the circumstances are exceptional or highly unusual. "Convenience of counsel" does not include a conflict with a previously-scheduled court or tribunal hearing date.

Adjournments *sine die* will only be granted in special circumstances Adjournment requests must include a specified time period at the end of which the hearing will commence or reconvene.

How to Request an Adjournment

Rules 38 and 39 of the Tribunal's Rules of Practice read as follows:

> 38 Any request for an adjournment shall be made in writing at least seven (7) days before the date of the Hearing or its continuation, unless the Tribunal in its discretion otherwise permits.
>
> 39 In granting an adjournment, the Tribunal may impose such conditions as it considers appropriate.

Parties requesting an adjournment prior to the commencement of the hearing shall serve notice of the request upon all other parties and file service of the notice with the Tribunal. Requests for adjournments shall be in writing, and shall include the following information:

- Whether the other parties consent to the request and the date suggested for the commencement or continuation of the hearing.
- Detailed reasons for the request, including, if appropriate, affidavit evidence as to (for example) ongoing testing on the site which would not be completed by the dates set for the hearing.
- Evidence that the party made all reasonable efforts to avoid the need for the adjournment request.
- Any urgency for the request because of the public interest.
- Any other factors relating to the considerations listed above.

If the request for an adjournment is based upon a joint-party initiative to mediate the issues, the mediation schedule and objectives are to be set out, and the parties should expect that the adjournment order, if it is granted, will be to a set date and will include a requirement for progress reports to the Tribunal, geared to the mediation schedule.

If the request for an adjournment is based is based upon the need for environmental testing or other similar event, the parties should expect that the adjournment order, if it is granted, will be to a set date and will include a requirement for periodic progress reports to the Tribunal.

If the Tribunal cannot provide hearing facilities for the adjournment date, then the requesting party will be expected to make the alternate arrangements for the hearing facility.

If clarification is required concerning bringing a motion for an adjournment, a party or counsel may contact the Tribunal Secretary.

Guideline on Costs Awards

1. What is the purpose of this Guideline?

This Guideline aims for consistency and predictability in the awarding of costs where permitted by law by outlining relevant principles and evaluation criteria. This Guideline does not limit the Tribunal's general discretion to award costs based on the particular circumstances of each proceeding.

2. What is a costs award?

A costs award refers to the reimbursement of reasonable and eligible expenditures incurred by a party for participation in a proceeding before the Tribunal in which the Tribunal has the statutory authority to make cost awards.

3. What is the general principle behind costs awards?

The Tribunal awards costs to parties who make a substantial contribution to the conduct of a meaningful public hearing process through responsible and informed participation which helps the Tribunal to understand and effectively address the matters at issue.

4. Where does the Tribunal get its Jurisdiction to award costs?

Costs may be awarded for proceedings before the Environmental Review Tribunal under section 21 of the *Environmental Assessment Act*. Similarly, costs may be awarded for a proceeding before a joint board under section 7 of the *Consolidated Hearings Act*. Costs may also be awarded for certain application proceedings before the Tribunal under sections 32, 33, and 36 of the *Environmental Protection Act*. These sections provide that the Tribunal:

a) may award the costs of a proceeding before the Tribunal;

b) may order to whom and by whom the costs are to be paid;

c) is not limited to the considerations that govern awards of costs in any court;

d) may fix the amount of the costs or direct that the amount be assessed; and

e) may direct the scale according to which costs are to be assessed and by whom they are to be assessed.

5. Who pays costs?

In most cases, costs are paid by the proponent of the proposed project, plan or program. In exceptional circumstances, costs may be imposed on a non-proponent party, if that party's participation was frivolous, vexatious, or without merit. However, negative participation by a non-proponent party will normally be addressed by a denial or reduction of costs.

Parties must take all reasonable steps to avoid unnecessary motions and other actions which delay the proceeding. If a motion, or the opposition to a motion, is frivolous, vexatious or without merit, costs may be awarded, payable forthwith, against the party bringing or opposing the motion.

6. What proportion of eligible expenses may be recovered in a costs award?

Parties should not assume they will recover all of their eligible expenses through a costs award. All parties are required to make a reasonable contribution to the cost of their participation. However, if their participation satisfactorily addresses the principles and criteria established by this Guideline, parties can recover their eligible and reasonable expenses as determined by the Tribunal.

Based on the circumstances of each case, the hearing panel will determine the scope of the costs and whether the commencement date for work billed may precede the date of the Notice of Hearing.

7. Who is eligible for costs?

Only hearing parties (full-time and part-time) are eligible to receive costs. Participants are not liable to pay costs and they are not eligible to receive costs. Public agencies and municipalities are entitled to request an award of costs. However, costs will not normally be awarded for: participation in a proceeding which is within the normal responsibilities and activities carried out by the agency or municipality; costs related to in-house staff performing their normal range of duties; and outside consultants retained in place of qualified and available in-house staff.

8. What types of expenses are normally eligible for a costs award?

8.1 Eligible expenses which may be recovered through costs include:

a) legal, consulting and expert fees;

b) travel and related expenses;

c) transcripts, photocopying, facsimile, delivery costs, applicable taxes; and

d) other necessary and reasonable disbursements.

8.2 Legal, Consulting and Expert Fees and Hours

The Tribunal has established fee levels for legal and professional services based on Tribunal experience and practice, and the need to establish reasonable limits to hearing costs. Fee rates for legal, expert and consulting services are outlined in section 13. Within each experience category, the fee range allows adjustments based on the contribution of the service provider with respect to the criteria outlined in section 10 of this Guideline.

The number of hours awarded will be based on: the length of the proceeding; the complexity of the proceeding; the evidence of beneficial results from good preparation; the degree of responsibility assumed by the service provider; the quality of the service provider's contribution to the proceeding; the documentation and verification of the hours billed; argument by opposing parties; the criteria outlined in sections 10 and 13 of this Guideline; and other relevant factors.

Costs for preparing and presenting the actual costs application are available only where the applicant's costs claim is reasonable.

8.3 Disbursements

Reasonable disbursements which are directly related to a party's participation in the proceeding may be recovered. Expense documentation and receipts are normally required. Section 14 contains further details on eligible disbursements.

9. What criteria does the Tribunal apply when evaluating costs?

Regarding the award of costs to a party, the Tribunal will consider, among other things, whether the party:

(a) represented a clear and ascertainable interest;

(b) contributed substantially to a meaningful public hearing process;

(c) participated in a responsible and informed manner;

(d) helped the Tribunal to understand the matters at issue;

(e) demonstrated and delineated the purpose for the expenditure of funds;

(f) coordinated a number of common interests and concerns by forming a group or coalition;

(g) cooperated with other parties and shared experts where possible to efficiently address issues and provide evidence;

(h) contributed to a more efficient (shorter) Hearing;

(i) complied with the Rules of Practice of the Environmental Review Tribunal, the hearing schedule, hearing deadlines, and any further Tribunal directions;

(j) made reasonable and timely efforts to share information with other parties, resolve or scope issues, discuss potential conditions of approval, and explore alternative methods of dispute resolution;

(k) relative success of the party at the hearing.

Factors that may reduce the costs awarded include, among other things, whether the party:

(a) disputed a fact, issue or opinion when it was unreasonable or unnecessary to have done so;

(b) delayed or lengthened the hearing unnecessarily by its conduct;

(c) failed to comply with the Rules of Practice of the Environmental Review Tribunal, the hearing schedule, hearing deadlines, and any further Tribunal directions;

(d) contributed to duplication of testimony, documentary evidence or submissions.

10. What is the role of interim costs?

A party of modest means may apply before the end of a hearing process to recover legitimate expenditures and the Tribunal may award interim costs for a portion of the expenditures already incurred by a party. Prior to the filing of an interim costs application, an applicant must demonstrate financial need and obtain the Tribunal's permission.

The relevant principles (e.g. negotiation first) and criteria listed elsewhere in this Guideline also apply to the consideration of an interim costs award. An interim costs award will not include projected expenditures for hearing participation.

11. What are the content requirements of a costs application?

The costs applicant bears the burden of proof and must demonstrate that any requested costs are:

a) directly and necessarily incurred in relation to the proceeding before the Tribunal;

b) reasonable in the circumstances;

c) properly documented and verified; and

d) consistent with the principles and criteria outlined in this Guideline on Costs.

If the aforementioned onus is not discharged, the Tribunal may disallow the costs in question. When filing a costs claim application with the Tribunal, the claimant must provide:

(i) an explanation of how the requirements in a), b), and d) described above have been met;

(ii) a summary statement of hours and fees for each lawyer and consultant, supported by time dockets, invoices and a detailed description of the activity; and

(iii) a summary statement of disbursements for each lawyer or consultant (or group) supported by corresponding invoices or receipts. Where invoices or receipts are not obtainable for good reasons, the Tribunal may accept a written record of individual disbursements and associated dates.

12. Timing of the Process

In most cases, the Tribunal will not decide issues of costs until the decision on the overall substance of the proceeding is released and the parties have made reasonable efforts to negotiate a settlement. If a party, against whom costs are sought, objects to another party's application for costs on the basis of eligibility or quantum, the objection and any associated argument must be filed with the Tribunal and the parties within fourteen days after the filing of the costs claim (or as directed by the Tribunal). The costs applicant(s) then has fourteen days to file any relevant reply (or as directed by the Tribunal).

Once this process is complete, the Tribunal may decide the issues of costs based on the written applications and submissions, or the Tribunal may allow a brief oral hearing to clarify matters. In its costs decision, the Tribunal may order to whom and by whom the costs are to be paid and fix the amount of the costs. The Tribunal also has the discretion to direct the scale at which the costs are to be assessed and assign the actual assessment, subject to confirmation by the Tribunal, to a designated person.

13. Cost Award Component Rates

Legal Fees	**range**
Senior Counsel (>10 yrs. experience[1])	$140 - $190 /hr
Intermediate Counsel (5-10 yrs exp.)	$120 - $160 /hr
Junior Counsel (<5 yrs exp.)	$100 - $140 /hr
Paralegal or Articling Student	$50/hr

Consulting Fees	
Expert/Partner/Principal	$120 - $190 /hr
Senior Consultant (>10 yrs. experience[1])	$100 - $ 160 /hr
Intermediate Consultant (5-10 yrs exp.)	$ 80 - $120 /hr
Junior Consultant (<5 yrs exp.)	$ 60 - $ 90 /hr
Technician or Analyst	$ 50/hr

Disbursements[2]	**current rates**
Travel by Automobile	30¢/km
Meals	$36.00/day
Photocopies/facsimile	25¢/copy

---

1 Years of experience in the relevant field

2 The cost of meals, up to a maximum of $36/day or the applicable Ontario government rate at the time the expense was incurred, will normally be allowed when the claimant is located more than 99 kilometres from the Hearing site. Hotel accommodation will normally be allowed when the claimant is located more than 99 kilometres from the Hearing site and the Hearing lasts for more than one day. Reimbursement for hotel accommodation may not exceed $100 per night. Reasonable claims for public transit, taxi or airport limousine travel are acceptable. Reimbursements for air and rail travel will be limited to "economy" fare rates. Reasonable compensation for travel time will be considered when the claimant is located more than 99 kilometres from the site of the proceeding and the attendance of the claimant is necessary. Updates to Ontario government disbursement rates are available from the Tribunal.

Forms

Form 1 - Statement of Service

Proof of service shall be demonstrated by filing an affidavit of service or a Statement of Service in *Form 1*.

Environmental Review Tribunal

Statement of Service
(Form 1)

NOTE: The purpose of this statement is to verify that a copy of a document was delivered to a party. A Statement of Service (Form 1) or a statement containing all the information required in this form, must be completed for every document served, for each party. In addition, a copy of the facsimile cover transmission record, or the courier or postal receipt may be required as evidence to support this statement.

Case Name **Tribunal Case No.**

Between

Applicant/Proponent

and

Respondent(s)

and

Other Party(ies)

Method of Service

Type of notice served	Method of Delivery	☐ Personal Delivery
☐ Notice of Preliminary Hearing	☐ Certified Mail	Address where you served document(s):
☐ Notice of Hearing	☐ Registered Mail	
☐ Other (specify)	☐ Courier (including Priority Post)	☐ Other (specify method and time frame
.....	☐ Facsimile copier (FAX)	agreed to by Tribunal or Tribunal Secretary):
Name of courier, agent or service	Date document(s) sent [mm/ dd/ yy]	Time document(s) sent A.M./P.M.

Confirmation

Acting on behalf of ☐	☐ Respondent	☐ Other Party
I state that I served	[Name of person served]	
who represents	[Name of party served]	
[Name of person who served (print)]		Signature
Position title	Dated at [location]	Date [mm/dd/ yy]

Form 2 - Summons to Witness (For oral hearing)

(Name of Act under which proceeding arises)

SUMMONS TO A WITNESS BEFORE
The Environmental Review Tribunal

TO: (name and address of witness)

YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding on .....(day), ...(date), at .....(time) at ..... (place), and to remain until your attendance is no longer required.

YOU ARE REQUIRED TO BRING WITH YOU and produce at the Hearing the following documents and things: (Set out the nature and date of each document and give sufficient particulars to identify each document and thing.)

.....

.....

.....

.....

IF YOU FAIL TO ATTEND OR TO REMAIN IN ATTENDANCE AS THIS SUMMONS REQUIRES, THE SUPERIOR COURT OF JUSTICE MAY ORDER THAT A WARRANT FOR YOUR ARREST BE ISSUED, OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT.

Date _____

Environmental Review Tribunal

_____

(Signature by or on behalf of Tribunal)

NOTE: You are entitled to be paid the same fees or allowances for attending at or otherwise participating in the Hearing as are paid to a person summoned to attend before the Superior Court of Justice.

Form 3 - Summons to Witness (For electronic hearings)

(Name of Act under which proceeding arises)

SUMMONS TO A WITNESS BEFORE
The Environmental Review Tribunal

TO: (name and address of witness)

YOU ARE REQUIRED TO PARTICIPATE IN AN ELECTRONIC HEARING on .....(day), ...(date), at .....(time), in the following manner: (Give sufficient particulars to enable witness to participate.)

.....

.....

.....

.....

IF YOU FAIL TO PARTICIPATE IN THE HEARING IN ACCORDANCE WITH THE SUMMONS, THE SUPERIOR COURT OF JUSTICE MAY ORDER THAT A WARRANT FOR YOUR ARREST BE ISSUED, OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT.

Dated _____

Environmental Review Tribunal

_____

(Signature by or on behalf of Tribunal)

NOTE: You are entitled to be paid the same fees or allowances for attending at or otherwise participating in the Hearing as are paid to a person summoned to attend before the Superior Court of Justice.

Sample General Procedural Directions in an Appeal Application

"HEARING NAME"
IN THE MATTER OF the
AND IN THE MATTER OF an application

GENERAL PROCEDURAL DIRECTIONS

Parties and Participants

1. The parties and participants to this hearing are listed in the attached Appendix "A".

Issues

2. On the basis of submissions made by the parties, the Tribunal has identified the following preliminary issues for consideration during the preliminary hearing process:

A. Proponent/Appellant:

B. The Director/MOE

1.
2.

C. Other Parties

1.
2.

D. General [including Tribunal issues]:

1.

2.

This list of preliminary issues will be the subject of efforts during the preliminary hearing process to reach consensus among the parties.

In defining issues for an Issues List, the objective is not to simply list a series of topics or questions which may be of general interest or relevance. Rather, the party should set out:

- the specific complaint or concern;

- an explicit description of the alleged deficiencies giving rise to the complaint and causing the matter to be placed in issue;

- an explicit description of the relevance of the complaint to the question of the approval of the applications;

- in relation to each issue raised, any suggested term and condition or remedial action which the party believes would substantially address the deficiency complained of, or if the party believes that it is not possible, a statement of the reasons as to why the matter in issue cannot be addressed by any appropriate term and condition or remedial action.

Delivery of Documents and other Information

3. Following the Preliminary Hearing, hearing documents and correspondence to be filed shall be distributed by prepaid first class mail, telephone facsimile or delivery to the parties noted in Appendix "A", and to the Tribunal. Upon request, participants will be provided with copies of those documents and correspondence which are relevant to their interests.

4. Supporting documentation (including reports, witness statements and the curriculum vitae of consultants) for the proponent shall be filed by _____.

5. Supporting documentation (including reports, witness statement and the curriculum vitae of consultants) for all parties, other than the proponent, shall be filed by _____.

6. The parties are expected to file the documents required by these directions as far in advance of the filing deadlines indicated as is possible.

7. No documentation shall be filed after the deadlines provided without permission of the Tribunal.

Contents of Reports and Witness Statements

8. Please refer to the Tribunal's Practice Direction on Hearing Documents for general information on the content, filing and distribution of documents (reports, witness statements, correspondence and interrogatories).

   (a) Reports and witness statements should be concise, avoid internal repetition of information, and avoid duplication of information and documents contained in other reports and witness statements.

   (b) Lengthy reports should include a concise summary.

   (c) Revisions or amendments to reports and witness statements should be limited to new or corrected information only.

   (d) Copies of written communications between parties should not be filed with the Tribunal unless a response from the Tribunal is required.

   (e) The Tribunal may request documents in electronic form where appropriate.

Interrogatories [Only if required and upon the consent of the Tribunal]:

9. **Timing of interrogatories**:

   (a) Interrogatories directed to the proponent shall be submitted by _____.

   (b) The proponent's answers shall be submitted by _____.

   (c) Interrogatories directed to any other party shall be submitted by _____.

   (d) The answers by other parties shall be submitted by _____.

   (e) Supplementary interrogatories shall be submitted as soon as possible after receipt of the answers which prompt them.

   The parties are reminded of section 4 of the *Practice Direction on Written Questions and Answers* which states that the Tribunal shall not be sent copies of interrogatories and answers to interrogatories at the time they are exchanged by the parties.

Meetings of Consultants

10. The parties' consultants (including independent consultants, technical or professional staff and advisors) meeting(s) shall be held prior to _____.

Preliminary Joint Submission

11. By _____ the parties shall file a preliminary joint submission:

    (a) reporting on any resolved issues, including any agreed upon conditions of approval; and

    (b) listing unresolved issues and important considerations with respect to each of those issues, including the positions of each party.

Non-compliance with Procedural Directions

12. In the event that a party, or its counsel, representatives or consultants, fails to comply with the requirements set out in these procedural directions, or any subsequent directions which the Tribunal may issue from time to time, the Tribunal may:

    (a) impose such conditions as will ensure compliance;

    (b) where permitted by law, order costs to be paid by the party, or where appropriate, its representatives and/or consultants;

    (c) in those cases in which a pattern of non-compliance continues to persist, terminate party status.

Facilitation

13. The Tribunal may appoint a facilitator to assist parties to meet the requirements of these Procedural Directions and particularly to narrow and resolve any matters in dispute.

Conference

14. (a) The parties shall meet as soon as is practical in order to review the issues that may arise at the Hearing and to narrow those issues as much as possible prior to the commencement of the Hearing.

(b) A Conference shall be held on _____ at _____and will be facilitated by a member of the Tribunal or by a member of its staff.

(c) By _____, the parties shall file a revised joint submission, in the form described above, identifying any changes which have been made.

Case Outline

15. By _____, the parties shall each file a case outline briefly summarizing the evidence they intend to call, their list of witnesses, the issues and topics they will cover; and the number of hearing days anticipated for the examination-in-chief of their witnesses. Should the Tribunal wish to comment on additions or to delete issues and topics it will notify the parties by _____.

Conditions of Approval

16. (a) Proposed conditions of approval from the proponent shall be filed no later than _____.

(b) The parties shall forthwith discuss the proposed conditions in an effort to reach agreement with respect to them.

(c) On or before _____, the parties shall jointly advise the Tribunal as to which of these (or other) conditions, if any, meet with the support of all parties.

(d) Proposed conditions of approval from the parties opposing the proponent shall be filed before the hearing of oral evidence commences and shall be reviewed at the conclusion of the case for the proponent and the other parties in support, but before the commencement of the case for any of the parties in opposition.

i) The parties are encouraged to negotiate the terms of draft conditions of approval to be applied in the event that the undertaking is approved. The Tribunal's Guideline for Consideration of Agreements will apply.

ii) Draft conditions which remain in dispute among the parties may be amended or deleted by the Tribunal.

iii) Where issues remain in dispute, agreed upon draft conditions which relate to the issues in dispute may be altered or deleted by the Tribunal.

Note: Any agreement on conditions of approval is without prejudice to the position of parties opposing the application.

Duration of Main Hearing

17. The duration of the Hearing, including final argument and site visit, has been estimated by the parties to be approximately _____ hearing days. The Tribunal sets an objective of _____ hearing days.

Hearing Timing

18. (a) The hearing of evidence shall commence on _____ at_____.

(b) The Hearing will adhere to the daily schedule set out in Appendix C.

(c) A site visit is scheduled for _____.

(d) An evening Session will be held on _____ for the convenience of the interested public who are unable to attend at other times. The evening Session will begin at 7:00 p.m. and will be held at _____. Notice will be given by the proponent in accordance with directions for notice to be issued by the Tribunal.

Order of Evidence and Argument

19. The parties shall call evidence and make final argument in the following order:

(a) the proponent;

(b)

(c)

(d)

(e)

General Guidelines for the Presentation of Evidence at the Hearing

20. (a) Each party should prepare a short opening statement that describes the unresolved issues and conditions of approval which that party will address at the Hearing. An outline of the evidence the party intends to call, a list of witnesses, the topics to be covered and the time required for examination-in-chief should be included in the statement.

(b) Curricula vitae of consultants should be submitted in advance to the Tribunal and all parties. Little or no direct oral evidence on qualifications shall be given unless the credentials of the witness are challenged. In the event of a challenge, written notice, including particulars, shall be given to the party calling the consultant at least seven days before the challenge is made.

(c) No oral evidence will be introduced with respect to those issues which have been resolved, and those conditions of approval which have been agreed upon, unless the Tribunal requests this elaboration, or unless those resolved issues and agreed upon conditions are related to issues and conditions which remain in dispute among the parties. All evidence relating to history and background should be avoided, unless it bears directly on the outstanding issues and conditions, and is necessary.

(d) Bearing in mind that the Tribunal will have documentary evidence before witness examination, every effort should be made to achieve concise examinations of witnesses by focussing on the most essential issues. In order to minimize the time required for examination-in-chief (and cross-examination), the following guidelines should be followed:

(i) For those witnesses for whom witness statements are required, examination-in-chief will be limited to a review of the important points in the witness statements.

(ii) The witness should adopt his/her witness statement, and point out any errors or areas where the evidence has changed.

(iii) If the evidence will include information contained in a report, the report should be filed.

(iv) With respect to sub-paragraphs (i), (ii), (iii) above, the page and paragraph numbers of all references should be identified.

(v) Witnesses should be led in all areas where it is possible and reasonable to do so.

(vi) In general, an allowance of up to 30 minutes per witness should be adequate for examination-in-chief, and 90 minutes per witness for cross-examination.

(e) A copy of each document to be filed should be available for each member of the Hearing Panel, the Tribunal's exhibit file, the verbatim reporter (where required), and the public review file referred to in paragraph 23 below.

(f) At the close of each day the party presenting evidence shall indicate the witnesses to be heard the following day. At the end of each week the parties presenting evidence the following week shall indicate the witnesses to be heard that week.

(g) Reports and witness statements shall be expressed, to the extent possible, in clear and non-specialized language. Measurements such as 10-6 cm/s shall also be expressed in a form more easily understood, such as 2.5 cm/month.

Communication with Tribunal

21. Parties represented by counsel or agent should communicate with the Tribunal only through their counsel or agent.

Costs

22. See the Tribunal's Guideline on Costs Awards.

Public Record File

23. (a) In addition to providing a copy of all exhibits for each panel member and one copy for the record file, all Parties shall supply an additional copy of exhibits for the creation of a public exhibit file. The proponent will maintain this exhibit file and make it available for public scrutiny at the Hearing location. The proponent will also include in this file a copy of the Hearing transcript, if one has been ordered.

(b) Transcripts of the main Hearing will be available as follows:

(i) supplied by the proponent, at _____.

(ii) supplied by the Environmental Review Tribunal at Suite 1201, 2300 Yonge Street, Toronto, Ontario.

General Guidance

24. The Rules of Practice of the Environmental Review Tribunal should be referred to by the parties for general guidance.

Flexibility

25. The Tribunal may, from time to time, dispense with compliance to these directions, and/or amend or supplement these directions.

For further information on matters relating to this Hearing, contact the Tribunal Secretary at the Environmental Review Tribunal, 2300 Yonge St., Suite 1201, Toronto, Ontario, M4P 1E4, telephone number (416) 314-4600, fax number (416) 314-4506 e-mail: ERTTribunalSecretary@oeb.gov.on.ca.

DATED at TORONTO this day of , 200

"signed"
Name
Title

Attachments:

Appendix "A" List of Prospective Parties, Participants and Presenters
Appendix "B" Summary of Scheduled Deadlines

Appendix "B"

"HEARING NAME"

SUMMARY OF SCHEDULED DEADLINES

Date	Procedural Direction Activity	Direction Number
_____	Proponent to file supporting documentation	4
_____	Filing of supporting documentation by all parties, other than the proponent	5
_____	Filing of interrogatories directed to the proponent	9(a)
_____	Filing of interrogatories from the proponent to any other party	9(b)
_____	Proponent to file responses to interrogatories	9(c)
_____	Filing of responses to interrogatories from any other party	9(d)
_____	Meeting of consultants	10
_____	Filing of joint submissions by parties	11
_____	Settlement Conference, if required	14(b)
_____	Filing of revised joint submission by parties	14(c)
_____	Filing of Case Outline	15
_____	Filing of proposed conditions of approval from the proponent	16(a)
_____	Parties to jointly advise Tribunal which conditions meet with the support of all parties	16(c)
_____	Commencement of hearing of evidence	18(a)
_____	Site Visit	18(c)
_____	Evening Session	18(d)

Approved May , 2002